

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 COURTNEY LINDE, ET AL.,)

4 Plaintiffs,)

7 -against-)

10 ARAB BANK, PLC,)

11 Defendant.)
12 _____)

04CV02799 (BMC)

And all related cases:

04CV05449 (Litle)

04CV05564 (Almog)

04CV00365 (Coulter)

05CV00388 (Afrait-Kurtzer)

05CV03183 (Bennett)

05CV03768 (Roth)

06CV01623 (Weiss)

United States Courthouse
Brooklyn, New York

WEDNESDAY, AUGUST 27, 2014

13 TRANSCRIPT OF CIVIL CAUSE FOR JURY TRIAL
14 BEFORE THE HONORABLE BRIAN M. COGAN
15 UNITED STATES DISTRICT JUDGE

16 APPEARANCES:

17 FOR PLAINTIFFS LINDE
AND COULTER:

OSEN, LLC
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18 TURNER & ASSOCIATES, PLLC
19 BY: CLYDE T. TURNER, ESQ.

20 FOR PLAINTIFFS LITLE,
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BY: JODI FLOWERS, ESQ.

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(APPEARANCES CONT.)

FOR THE DEFENDANT: DLA PIPER US, LLP
BY: SHAND STEPHENS, ESQ.
BY: ANTHONY PAUL COLES, ESQ.
BY: BRETT INGERMAN, ESQ.
BY: MARGARET CIVETTA, ESQ.

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Proceedings recorded by mechanical stenography, transcript
produced by computer-assisted transcript.

1 (Outside the presence of the jury.)

2 THE COURT: With regard to the letter I received
3 yesterday, concerning the witness scheduling issue, there's
4 not a lot I can do to help here. I've got a really full
5 calendar tonight, so I can't get rid of that; that includes a
6 sentencing tonight. I think we're just going to have to see
7 what happens. I'm sure the defendant will do what they can to
8 not inconvenience the witness or the plaintiffs, consistent
9 with their obligation to represent the client, so we'll just
10 have to see. There was one other thing. Yes, I need to have
11 specific and exhibits by Friday. Okay. Yes.

12 MR. OSEN: Your Honor, depending on what happens
13 here today, we'll either have it by Friday or even have it
14 today, depending on how things go, so they're more or less
15 ready, subject to the schedule.

16 THE COURT: Okay. Anything else we need to cover?
17 All right. We'll have the jury, please. You should sit.
18 Might take a while. We are off to an early start. That's
19 good. We're checking on the jurors' schedules for a week from
20 Friday, so we should know that this morning.

21 MR. OSEN: Your Honor, one other question.

22 THE COURT: Yes.

23 MR. OSEN: The deposition designations are still
24 pending. Presumably we'll play them tomorrow.

25 (In the presence of the jury.)

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1 THE COURT: We're working on that.

2 Be seated, please. Good morning, ladies and
3 gentlemen.

4 THE JURORS COLLECTIVELY: Good morning.

5 THE COURT: We'll continue with direct examination.
6 I think where we left off was the proffer of Exhibit 3812,
7 which was received over objection.

8 MR. TURNER: Thank you, your Honor.

9 RONNI SHAKED,
10 recalled as a witness, by and on behalf of the plaintiffs,
11 having been first duly sworn, was examined, and testified
12 further as follows:

13 DIRECT EXAMINATION (CONTINUED)

14 BY MR. TURNER:

15 Q And just for purposes of putting it into context, 3812
16 was one of the claims of responsibility by Hamas; is that
17 correct, sir?

18 A I need to know exactly what terror attack this is.

19 Q Mike's Place?

20 A Yes, indeed so.

21 Q Now, in addition to the claims of responsibility, and I
22 believe yesterday it was established that there were two
23 separate ones; one a short time after the attack, and then
24 another one, I think, over a year later.

25 Were there other claims of responsibilities made by

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1 any other terror organizations for the Mike's Place attack?

2 A Yes, there were other organizations, sir.

3 Q Who else claimed responsibility for that attack, other
4 than Hamas?

5 A Because this whole thing was very vague, there were
6 various organizations that try to piggyback. This particular
7 one, it was the Hamas the, PIJ, and I myself admit that I
8 thought there were even traces of Al-Qaeda there. There were
9 others who argued it was the Hezbollah. It was very vague.
10 It wasn't clear. The various organizations tried to claim
11 responsibility for this one.

12 Q Over a period of time, did responsibility for the Mike's
13 Place attack clarify itself?

14 A Yes.

15 MR. TURNER: Your Honor, may we go back and display
16 the slide, your Honor?

17 THE COURT: Yes.

18 Q Now, yesterday -- we won't go back through all this, but
19 yesterday we talked about the banner, Hamas banner; we talked
20 about the Hamas headbands; we talked about the photograph, and
21 the one thing we didn't talk about, which is already in
22 evidence, is did Hamas at some point in time release a video
23 of these two terrorist prior to the attack?

24 A Indeed, the Hamas released a videotape of these two
25 terrorists who perpetrated the terror attack.

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1 Q And, the video, was it made prior to the attack by Hamas?

2 A Yes.

3 Q And can you give us a time perspective; when was the
4 video released of these two terrorists after the attack?

5 A This videotape was released by Hamas a year after the
6 terror attack.

7 MR. TURNER: May we display 3811, which is already
8 in evidence. This is the ISA report. This will be pertaining
9 to a section pertaining to Mike's Place.

10 Q Did the ISA, the Israeli Security Agency, report that was
11 ultimately issued about the Mike's Place attack, identify the
12 same two suicide bombers as you were able to identify them?

13 A Yes, they were identified by the ISA report.

14 Q In addition to the ISA report, were you given access to
15 other government agency reports and announcements that further
16 clarified that Hamas was, in fact, responsible for this
17 attack?

18 A Yes, there were.

19 Q As part of the other sources of information, did you at
20 any point in time have access to Hamas-created memorials of
21 this particular attack, glorifying the terrorists?

22 A Yes, I did have access to the posters or what we've seen
23 here, which was the beginning of a videotape.

24 Q Did that further help you cross-check your sources of
25 information for accuracy?

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1 A Yes, it did.

2 Q Did you have an opportunity to investigate the Bus 6
3 bombing in Jerusalem, at a place called French Hill that
4 occurred May 18th, 2003?

5 A Yes, I examined this terror attack, too.

6 Q Now, the jury has already had an opportunity to see the
7 videotaped deposition of Mr. Averbach, at the first of the
8 trial; and I realize you were not here, but were you able to,
9 as part of your investigation, identify who the suicide bomber
10 was in this particular attack?

11 A Yes.

12 MR. TURNER: May we display the slide for Bus 6
13 bombing?

14 THE COURT: You may.

15 Q Who was the suicide bomber that blew up Bus 6?

16 A At the bottom part of the slide, you can see the picture
17 of Basem Takruri, a very young man, perhaps, 19 or 20, or even
18 younger than that. He blew himself up on Bus 6 on French
19 Hill.

20 Q Were you able to determine whether he was acting alone or
21 acting for Hamas?

22 A He acted on behalf of Hamas. If I may tell you, this
23 young man wore the clothes of a religious Jewish man. He wore
24 a yamika, a skull cap, and a black coat to camouflage his
25 identity, and he did this because Hamas demanded him and

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1 requested him to do this. So he did this for Hamas, and he
2 saw himself as a member of Hamas.

3 MR. TURNER: Show the witness 3830, please.

4 Q Do you recognize 3838?

5 A Yes, I do.

6 Q What is 3838?

7 A This is an official claim of responsibility for the
8 bombing of Bus 6 in Jerusalem that was published by Hamas.

9 MR. TURNER: We offer 3838.

10 THE COURT: Need a little more foundation, please.

11 Q What is the source of 3838?

12 A The source for this document is the official Internet
13 website of the Qassam Brigades, the military wing of Hamas.

14 THE COURT: All right. The document is admitted
15 over objection.

16 (Plaintiffs' Exhibit 3838 was received in
17 evidence.)

18 Q In addition to the official claim of responsibility by
19 Hamas for the bombing of Bus 6, did you have access to the
20 Israeli Security Agency report previously marked as 3811,
21 which confirmed your findings with regard to claim of
22 responsibility?

23 A Yes, I did have the opportunity to examine official
24 documents.

25 MR. TURNER: May we briefly display the portion of

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1 the ISA report pertaining to this attack?

2 THE COURT: You may.

3 Q Did the Israeli Security Agency report help you confirm
4 both the identity of the suicide bomber and Hamas' role in
5 this attack?

6 A Yes, it was with the help of this report that I could
7 cross-check the information that I had.

8 Q Did you also have access to other government agency
9 information, such as Prime Minister releases of the ISA
10 report, relating to this particular attack?

11 A Yes, I did.

12 MR. TURNER: Would you show the witness 3852,
13 please.

14 Q Can you identify 3852, sir?

15 A Yes.

16 Q What is 3852?

17 A Yes, this is the sentencing that was given against Omar
18 Sharif, member of Hamas, who fitted the belt and dispatched
19 the suicide bomber who perpetrated the attack on busses.

20 MR. TURNER: Your Honor, we offer 3852 as Apostilled
21 or certified.

22 THE COURT: It is received over objection.

23 (Plaintiffs' Exhibit 3852 was received in
24 evidence.)

25 Q Did you -- in addition to these other sources of

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1 information we've talked about, did you at some point in time
2 come into possession of a will, a video will, of one of the
3 perpetrators of this attack?

4 A Yes, I did have access to the long will of the suicide
5 bomber.

6 Q And what was the source of the video will of the suicide
7 bomber?

8 A The will was published by the Qassam Brigades, the
9 military wing of a Hamas, after the execution of the attack by
10 Basem Takruri.

11 Q Did this will, and particularly the words of the suicide
12 bomber himself, help assist you in identifying Hamas as the
13 responsible organization for this attack?

14 A Indeed, these words helped me. In particular, the
15 personal words uttered by the terrorists who said I, the
16 living, Shaheed, operate on behalf of Hamas organization in
17 the execution of this attack.

18 MR. TURNER: Your Honor, we would offer 3863 into
19 evidence and ask that we show the video.

20 THE COURT: All right. That is received over
21 objection.

22 (Plaintiffs' Exhibit 3863 was received in
23 evidence.)

24 MR. TURNER: May we have the lights?

25 (Video played for the jury.)

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1 THE COURT: Can you pause it a minute.

2 Do you need more?

3 MR. TURNER: Pardon?

4 THE COURT: Do you need more?

5 MR. TURNER: No, sir.

6 THE COURT: Please continue.

7 MR. TURNER: There's not much more of it. That's
8 fine. Could we have the lights?

9 Q And, finally, as sources of information for the Bus 6
10 suicide bombing on French Hill, did you have access to
11 memorializations, glorifying this particular terrorist that
12 were published by Hamas after the attack?

13 A Yes, I did receive such materials.

14 MR. TURNER: Your Honor, we would also offer into
15 evidence 3853, which is the conviction record of Basel
16 Qawasmeh, and it's Exhibit 3853. It's Apostilled.

17 MR. INGERMAN: Your Honor, this is one of the ones I
18 think Mr. Osen and I spoke about; they were not going to offer
19 it because it was not in the expert's report.

20 MR. TURNER: We're not offering it through the
21 witness, I'm just offering the Apostille conviction of Basel
22 Qawasmeh into evidence as a certified copy of the conviction
23 record.

24 THE COURT: Okay. Let's have a sidebar, please.

25 (Sidebar held outside the presence of the jury.)

Sidebar

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1 (Sidebar.)

2 THE COURT: Is it not on a particular exhibit list?

3 MR. INGERMAN: No, it's on the exhibit list, but it
4 wasn't in the expert's report.

5 THE COURT: What if they finish this expert, and
6 then offered it not through the expert? It's an Apostille
7 document.

8 MR. INGERMAN: I think it's got to come in through a
9 witness.

10 THE COURT: No, it's self-authenticating. It
11 doesn't.

12 MR. INGERMAN: We would object to it.

13 THE COURT: Overrule the objection.

14 (Sidebar concluded.)

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1 (In presence of the jury.)

2 THE COURT: All right. That document is received.

3 Continue.

4 (Plaintiffs' Exhibit 3853 was received in
5 evidence.)

6 Q Mr. Shaked, have you also had the opportunity to
7 investigate the Bus 14A bombing, the suicide bombing that
8 occurred in Jerusalem on Jaffa Road, on June 11, 2003?

9 A Yes.

10 Q Were you able to identify the suicide bomber in this
11 attack?

12 A Yes, I did identify him.

13 MR. TURNER: May we display the slide?

14 THE COURT: Yes.

15 Q Who was the suicide bomber that carried out the attack on
16 Bus 14A, resulting in 17 deaths and 100-plus injuries?

17 A At the bottom of the slide, you see the picture of Abd el
18 Muati Shabana. He was a Hamas operative. He committed the
19 bombing at the bus and committed suicide in it. You can also
20 identify him by the green bandana he's wearing on his head.

21 Q Were you able to determine whether Shabana acted alone or
22 whether Shabana was acting for Hamas in carrying out this
23 suicide attack?

24 A Shabana was member of Hamas, a member of Hamas, and he
25 committed this act in the name of Hamas, on behalf of Hamas,

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1 in the name of Hamas.

2 MR. TURNER: Show the witness 3866, please.

3 Q Can you identify 3866?

4 A Yes, I can identify this document.

5 Q What is 3866?

6 A This is a document by the al-Qassam Brigades from the
7 website of Hamas, in which they claim responsibility for the
8 line 14 bombing and tell the story of the suicide bomber.

9 MR. TURNER: We would offer 3866.

10 THE COURT: All right. That's received over
11 objection.

12 (Plaintiffs' Exhibit 3866 was received in
13 evidence.)

14 MR. TURNER: May we display 3866 very briefly?

15 THE COURT: You may.

16 Q Mr. Shaked, when the exhibit comes onto the scene, can
17 you identify for us whether or not the suicide bomber
18 photographed in the Hamas official claim of responsibility is
19 the same individual you identified as the suicide bomber of
20 Bus 14A in Jerusalem?

21 A Yes, indeed, this is the same picture of Abd el Muati
22 Shabana.

23 Q Did you, likewise, have access to the Israeli Security
24 Agency report from the investigation of this particular
25 attack, which has been previously marked as 3811?

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1 A Yes, I had access to the accident report.

2 MR. TURNER: May we briefly display the section of
3 the ISA report relating to the Bus 14A bombing?

4 THE COURT: Yes.

5 Q Did the ISA report identify the same suicide bomber?

6 A Yes, indeed, it identified the same suicide bomber,
7 Abd el-Muati Shabana.

8 MR. TURNER: Go back to the original slide, if you
9 will, slide of the attack.

10 Q The center photograph on the slide, once it pops up, will
11 be of Basel al-Qawasmeh. We previously marked as and
12 introduced 3853, which was the conviction record of Basel
13 al-Qawasmeh. Is that the same Basel al-Qawasmeh that
14 participated in this attack as well?

15 A Yes, the Basel al-Qawasmeh that we see -- whose picture
16 we see in the middle of the slide, with the white head (sic)
17 on his head, is the same Basel al-Qawasmeh who committed the
18 attack and commanded it.

19 MR. TURNER: Show the witness 3881, please.

20 Q Can you identify 3881?

21 MR. TURNER: That's not 3881. Exhibit 3881.

22 Q Can you identify 3881?

23 A Yes, I can.

24 Q What is 3881?

25 A Yes, this is the sentencing of Omar Mohammed Sharif, the

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1 man who fitted the explosive belt on the body of the suicide
2 bomber and dispatched him to bomb Bus Number 14.

3 MR. TURNER: We offer 3881 as Apostilled version or
4 certified version of the conviction records for Omar Sharif.

5 THE COURT: That's received over objection.

6 (Plaintiffs' Exhibit 3881 was received in
7 evidence.)

8 Q In addition to these other sources of information, did
9 you have an opportunity to locate a will for the suicide
10 bomber in your research?

11 A Yes.

12 Q And did you, likewise, have access to any memorialization
13 prepared by Hamas glorifying the suicide bomber for this
14 attack?

15 A Yes, Hamas did several memorializations for the glory of
16 this attack.

17 Q Did you also have an opportunity to investigate another
18 shooting attack on Route 60 that occurred on June 20, 2003?

19 A Yes, I did investigate that.

20 Q Were you able to determine whether or not Hamas was
21 responsible for this second attack on Route 60?

22 A Yes, I determined that it was a terrorist from Hamas who
23 perpetrated the shooting on Route 60.

24 MR. TURNER: May we display the side related to this
25 attack?

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1 THE COURT: Yes.

2 Q Were you able to identify some of the key individuals
3 involved in this attack through your investigation?

4 A Yes, I did.

5 Q Now, there's a group of five individuals across the
6 bottom. Can you very briefly tell us about this particular
7 attack and the role of these five individuals in the attack?

8 A This is a group, a squad, of shooters. They had divided
9 roles between them. In the center of the picture we see two
10 shooters, Back med al Najab (phonetic/Hebrew) and
11 Faha Sua1 (phonetic/Hebrew). The driver was Ahmed Mohammed.
12 He's on the right-hand side on the photograph. And Yasser
13 Hamed, on the right-hand side, was a lookout and recognizance
14 man. The commander of this attack was Hide Oma
15 (phonetic/Hebrew), on the left-hand side of the picture.

16 Q And at the very top, Ibrahim Hamed, we've seen him in a
17 number of the attacks in the last day or so. What role did
18 Ibrahim Hamed play in this particular Hamas attack?

19 A Ibrahim Hamed was the commander of Hamas, of -- rather
20 the military wing of Hamas in Ramallah, and he had both to
21 authorize this action and also to give the instruction to
22 execute it.

23 MR. TURNER: Show the witness 3744, please.

24 Q Can you identify 3744?

25 A Yes, I can.

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1 MR. TURNER: I believe this may already be in
2 evidence, your Honor.

3 THE COURT: It is, but you were going to unredact
4 the top two lines.

5 MR. TURNER: Say that again. I apologize.

6 THE COURT: You have part of it blacked out above
7 the picture, and I thought we had agreed you were going to
8 submit it, as the defense requested, without those lines in
9 it.

10 MR. TURNER: That's no problem. We have no
11 objection to doing that. We're not going to display it. I'm
12 just showing this as part of the source of the information he
13 relied on.

14 THE COURT: That's fine.

15 Q What is 3744, Mr. Shaked, and how did that help you
16 identify Hamas as responsible for this particular shooting
17 attack?

18 A This was taken from the official website of Hamas, from
19 their public diplomacy department. It tells the story of the
20 squad, as Hamas tells it, according to the Hamas narrative,
21 and this was published after the members of the squad were
22 arrested. And this story, this narrative, as it appeared on
23 the website did help me in checking and making -- very fine
24 (sic) who exited the shooting on Route 60.

25 MR. TURNER: Your Honor, we would offer into

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1 evidence the following conviction records for four of these
2 individuals, relating to the Route 60 attack on June 20, 2003,
3 Exhibit 4007 of the Hijaz, H-i-j-a-z; 4008, the conviction
4 records of Omar, Route 60 attack; 4009, the conviction records
5 of Hamed, and 4010 Khaled. The conviction records, all
6 Apolstilled, were certified.

7 THE COURT: They are received over objection.

8 (Plaintiffs' Exhibit 4007, 4008, 4009, 4010 were
9 received in evidence.)

10 Q Did you, likewise, have an opportunity to investigate the
11 Bus 2 suicide bombing that occurred in Jerusalem on
12 August 19, 2003?

13 A Yes, I did.

14 MR. TURNER: May we display the side?

15 THE COURT: Yes.

16 Q Were you able to determine the name or identity of the
17 suicide bomber of Bus 2 that resulted in 23 deaths and a
18 hundred thirty-plus injuries?

19 A Yes.

20 Q And before we talk about each of these participants and
21 their role in this attack, can you describe for us the
22 significance of bomb -- of Bus 2 and the route of Bus 2 in
23 Jerusalem at the time of this particular attack?

24 A Bus Line Number 2 is mostly intended to serve the
25 religious population in Jerusalem. The aim of this particular

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1 bus line is to transport people from the Wailing Wall. This
2 is the holy place for the Jewish people that is located right
3 next to the temple, as it is seen, according to the tradition.
4 And, from there, to transport these people to their homes, in
5 a relatively not so well-to-do neighborhood of religious
6 people in Jerusalem. It is a very large bus, carrying people,
7 men, woman and children, who go back to their homes from the
8 evening prayer at the Wailing Wall.

9 Q What did your investigation reveal about Raed Misk, the
10 suicide bomber?

11 A Raed Misk is a very, very special type of suicide bomber.
12 He was extremely educated. He was at the very last stages of
13 writing his Ph.D. dissertation at the University of Nablus.
14 After finishing graduating his academic studies, he did his
15 BA/MA at the University of Hebron. He was a married man. He
16 had young children. However, he was extremely religious. You
17 might even call him fundamentalist. And he was prepared to
18 carry out the attack in a way that is very hard to describe.
19 He did it with great joy, almost elated. He was so happy to
20 carry out the murder of people.

21 Q Now, as part of your investigation, did you have access
22 to video will that was prepared as part of Hamas and
23 distributed by Hamas of Raed Misk?

24 MR. INGERMAN: Objection, your Honor.

25 MR. TURNER: It's in evidence, your Honor, as 3912.

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1 THE COURT: Well, the objection, I assume, is to the
2 question. I'm not seeing what's wrong with the question. Did
3 he have access to it?

4 MR. INGERMAN: Its leading.

5 THE COURT: It's preliminary. Overruled.

6 THE WITNESS: Yes, I did have access to this will.

7 MR. TURNER: Your Honor, at this point, we'd like to
8 show a clip of 3912. Its different than the clip previously
9 seen, and this goes directly to the part that Mr. Shaked was
10 referencing.

11 THE COURT: All right. You may proceed.

12 MR. TURNER: May we have the lights?

13 THE COURT: Yes.

14 MR. TURNER: This is clip two of Exhibit 39.

15 (Video played for the jury.)

16 MR. TURNER: Can you stop the video for a moment and
17 let me ask a question.

18 Q Does the headband have any significance, Mr. Shaked, for
19 purposes of relating this gentleman, this terrorist, to Hamas?

20 A Indeed so. In the Palestinian society, there are signs
21 and there are symbols for every organization. This is not a
22 monolithic society, so Hamas or the military wing of Hamas
23 would wear on their heads green headband. If it was the
24 Fatah, that would be a yellow headband. If it is the PIJ,
25 Palestinian Islamist Jihad, they would be wearing a black

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1 bandana. In the Popular Front for the Liberation of
2 Palestine, which is the more Marxist organization, would wear
3 a red headband. In other words, the headband is the symbol
4 that identifies and links the individual to the organization
5 he belongs to.

6 MR. TURNER: Okay. Mr. Miller.

7 (Video played for the jury.)

8 MR. TURNER: That's sufficient. Could we have the
9 lights.

10 Q Did that video assist you in connecting the relationship
11 between the terrorists and Hamas?

12 A Yes.

13 Q Did your investigation reveal how the terrorist was
14 disguised as he climbed aboard Bus 2 in Jerusalem?

15 A Yes.

16 Q How was he disguised?

17 A Yes. In order to match the appearance of other people
18 who would board this bus, he made himself look like a
19 religious man. He had black skull cap like the other
20 residents of the neighborhood who mounted that bus. They
21 would all have such on their heads. He was wearing a black
22 coat. And because he was a heavy man, he could conceal
23 underneath his black coat the explosive belt. When he boarded
24 the bus, everyone thought that that was yet another resident
25 of the neighborhood, another passenger. It was late at night,

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1 so it was easy for him to disguise himself.

2 MR. TURNER: Show the witness 3952, please.

3 Q Do you recognize 3952?

4 A I do.

5 Q What is 3952.

6 A This is an official claim of responsibility by Hamas
7 organization, or the military wing of Hamas organization, for
8 the perpetration of the attack on Bus Number 2 in Jerusalem by
9 the suicide bomber Rael Misk.

10 Q What is the source of 3952?

11 A The source is the official website of Hamas, the military
12 wing of Hamas.

13 MR. TURNER: We offer 3952 into evidence.

14 THE COURT: I thought this already came in through
15 Coleman. Am I wrong?

16 MR. TURNER: Did I do this earlier?

17 THE COURT: Not you. I thought it came in through
18 Coleman.

19 MR. TURNER: My note doesn't show that. If it's
20 already in evidence, that's fine.

21 THE COURT: If it's not, I'll admit it over
22 objection, but I think it's already in.

23 (Plaintiffs' Exhibit 3952 was received in
24 evidence.)

25 Q Now, in addition to the claim of responsibility, the

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1 official claim of responsibility by Hamas, did you also have
2 access to Exhibit 1248, which is in evidence, which is a
3 United States Government designation of terrorism that
4 specifically references the Bus 2 bombing in Jerusalem.

5 A Yes, indeed, this designation was published in the
6 Israeli media, in a very prominent way.

7 Q How did this particular piece of evidence assist you in
8 not only investigating this bombing but identifying Hamas as
9 one of the -- as the terror group responsible for this attack?

10 A This piece of evidence is but one piece of a whole
11 picture of many details that I collected. All together they
12 form the picture which led me to the conclusion that, indeed,
13 Hamas was behind this terror attack.

14 Q Did you also have access to conviction records of four of
15 the individuals on the slide we were previously looking at?

16 A Yes.

17 MR. TURNER: Your Honor, we would offer into
18 evidence the Apostille or certified versions of 3947, which is
19 Nisim Zatar; 3944, the conviction of Majdi Zatar; 3946, the
20 conviction records of Abdallah Sharif Barghouti; and 3945,
21 which are the conviction records of Jalil Ynghmur,
22 Y-n-g-h-m-u-r.

23 THE COURT: Those are received over objection.

24 (Plaintiffs' Exhibit 3947, 3944, 3946, 3945 were
25 received in evidence.)

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1 Q Did those conviction records further inform you about
2 Hamas' role in this attack?

3 A Yes, this piece of information helped me cross-check the
4 information I had.

5 Q Did you also have the opportunity to investigate the
6 suicide bombing at a place called Cafe Hillel, in Jerusalem,
7 that occurred September 9, 2003?

8 A Yes, I did investigate this attack.

9 MR. TURNER: May we display the slide?

10 THE COURT: Yes.

11 Q Were you able to determine the identity of the suicide
12 bomber who carried out the attack on Cafe Hillel, in 2003?

13 A Yes.

14 Q Were you able to determine whether he acted alone or
15 whether he was acting for and on behalf of Hamas in carrying
16 out this terrorist attack?

17 A Ramed abu Saleem (phonetic/Hebrew) was the terrorist of
18 Hamas, a member of Hamas who operated on behalf of Hamas, in
19 the framework of the cell of Hamas, and on behalf of Hamas
20 perpetrated this attack.

21 Q By way of background, can you tell us what was, back in
22 2003, Cafe Hillel in Jerusalem, and where was it generally
23 located?

24 A Cafe Hillel is located in a southern neighborhood in
25 Jerusalem, in the German colony. It is some sort of a yuppie

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1 neighborhood, where many traditional and young academics live.
2 This neighborhood has many cafes, and in the evenings, many
3 young people and many families attend those cafes, like in any
4 other place. This specific cafe became very popular even
5 before the attack. It was very popular among academics and
6 very young people.

7 Q How far was Cafe Hillel from your office in 2003?

8 A Two or two-and-a half kilometers away.

9 Q Did you go to the scene of this attack on the night of
10 the attack?

11 A Yes, I was in my home, and I rushed over there while
12 still in my slippers.

13 Q Can you give us an idea of approximately how long it took
14 you to get to the scene after the attack occurred?

15 A Not more than 15 to 20 minutes, I believe.

16 Q Were you able to determine who prepared the bomb for this
17 attack?

18 A Yes.

19 Q Who prepared the bomb?

20 A This man is called Baheesh Balel (phonetic), Hamas
21 operative, and he was the man who built the bomb.

22 Q At some point in time, did you actually have the
23 opportunity to sit down and interview the bomb-maker?

24 A Yes, I did have this opportunity, and I interviewed him.

25 Q And during the course of that interview, did you have the

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1 opportunity to talk with him about this particular attack in
2 Cafe Hillel and how he made the bomb?

3 A Yes, we did talk about the terror attack in Cafe Hillel
4 and the way he built the bomb.

5 Q Did you videotape the interview?

6 A Yes, I did.

7 MR. TURNER: Show the witness 3993, if you would.

8 Q Can you identify 3993, please?

9 A Yes, I can identify it.

10 Q What is 3993?

11 A Yes, this is a document of the Qassam Brigades, the
12 military wing of Hamas, taking responsibility for the Cafe
13 Hillel bombing. And in addition to another attack that
14 happened at the same time, but for our matter, Cafe Hillel is
15 what is important.

16 Q What is the source of 3993?

17 A The official website of al-Qassam Brigades, the military
18 wing of Hamas.

19 MR. TURNER: Offer 3993.

20 THE COURT: That's received over objection.

21 (Plaintiffs' Exhibit 3993 was received in evidence.)

22 Q Now, as part of following-up and cross-checking your
23 investigation, did you have access to the ISA report,
24 reporting on the investigation findings of the Israeli
25 Security Agency regarding the Cafe Hillel terrorist attack?

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1 A Yes, I did check ISA reports regarding the Cafe Hillel.

2 MR. TURNER: May we display 3811, which is already
3 in evidence?

4 THE COURT: Yes.

5 Q Did the ISA report assist you in identifying the suicide
6 bomber and some of the participants from Hamas in this attack?

7 A Yes, indeed, it happened.

8 Q Did you, likewise, have access to other government
9 records, such as the Prime Minister's records, relating to
10 this particular Cafe Hillel attack?

11 A Yes, I did.

12 Q Did those, likewise, confirm your conclusions?

13 A Every piece of such information is part of the general
14 picture, which later generates my conclusions.

15 Q Did you also have access to conviction records for some
16 of the participants in this attack?

17 A Yes.

18 MR. TURNER: We offer into evidence 3742 and 3987,
19 which are conviction records for Salah Musa, both Apostilled.

20 (Plaintiffs' Exhibits 3742 and 3987 were received in
21 evidence.)

22 THE COURT: They are received over objection.

23 Q Did you also have access to a will prepared by the
24 suicide bomber that was shown through Al Jazerra?

25 A Yes, I did.

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1 Q Did you have access to any memorializations prepared by
2 Hamas, glorifying the suicide bomber and attack on Cafe
3 Hillel?

4 A Yes, there were many.

5 Q Did you also have the opportunity to investigate a
6 shooting attack at a place called Tal Romeda, in October of
7 2003, near Hebron?

8 A Yes, I had this opportunity.

9 Q Were you able to identify the shooter in this particular
10 attack?

11 A Yes, I did.

12 MR. TURNER: May we display the slide for the Tal
13 Romeda?

14 THE COURT: You may.

15 Q Who was the shooter?

16 A The shooter is a resident of Hebron, a member of Hamas,
17 Rifiq Aqanibi.

18 Q During the course of your investigation, were you able to
19 determine whether Aqanibi acted by himself or whether he was
20 acting for Hamas in carrying out this attack?

21 A According to my investigation, Rifiq Aqanibi acted on
22 behalf of Hamas, as member of Hamas and for Hamas.

23 Q Tell us a little bit about the background of Tal Romeda,
24 where that is, and what is Tal Romeda?

25 A Tal Romeda is a Jewish settlement in the city of Hebron,

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1 not far from an area that is populated by Palestinians. This
2 is an area very accessible. It's easy to get to it. Normally
3 it is secured by the military, and there are several dozens of
4 families that live in it.

5 Q What did your investigation reveal about Aqanibi?

6 A My investigation Aqanibi found that he perpetrated the
7 attack as a member of Hamas, and I'm basing this on the data
8 that I collected, Hamas proclamations, other announcements and
9 the no-how that I have in identifying such people.

10 MR. TURNER: Can you show the witness 4030, please?

11 Q Mr. Shaked, can you identify 4030?

12 A Yes, I can.

13 Q What is 4030?

14 A Yes, this is an official announcement by al-Qassam
15 Brigades, claiming responsibility for the Tal Rameda attack.
16 In addition, this report includes details about the suicide
17 bomber, including his will and personal details about him.

18 Q What is the source of 4030?

19 A This is from the official site, website, of al-Qassam
20 Brigades, the military wing of Hamas.

21 MR. TURNER: We offer 4030.

22 THE COURT: I think I ruled it should be redacted.

23 MR. TURNER: I think there's portions of it
24 redacted. We're not going to show the document. We're just
25 offering it now, subject to your redactions.

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1 THE COURT: But you will redact it as previously
2 discussed?

3 MR. TURNER: Yes.

4 THE COURT: It's admitted over objection.

5 (Plaintiffs' Exhibit 4030 was received in
6 evidence.)

7 Q Were you at the scene of this particular attack?

8 A No, I wasn't in this scene.

9 Q And have you seen video of this scene?

10 A Yes, I did.

11 MR. TURNER: Can you show the witness 4017, please,
12 just the very first part of the news clip?

13 Q Do you recognize this video as a video that you've seen
14 previously?

15 A Yes.

16 Q And can you very generally describe for us what this
17 video shows?

18 MR. INGERMAN: Your Honor, may we approach?

19 THE COURT: Yes.

20 (Sidebar held outside the presence of the jury.)
21
22
23
24
25

Sidebar

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1 (Sidebar.)

2 MR. INGERMAN: Your Honor, my notes from your
3 overruling our objection to this video indicate that you had
4 admitted it, because there was a proffer from the plaintiffs
5 that Mr. Shaked was there and, therefore, can authenticate the
6 video.

7 THE COURT: That's my recollection.

8 MR. TURNER: That's coming. He said he wasn't there
9 at the night of the attack, he was there subsequently.

10 THE COURT: Let's let it get developed.

11 (Sidebar concluded.)

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1 (In the presence of the jury.)

2 MR. TURNER: May I proceed?

3 THE COURT: You may.

4 Q Do you recognize the video?

5 A Yes, I can only see the beginning.

6 MR. TURNER: Can we show him just a little clip of
7 it, him only, with no voice, no noise?

8 THE WITNESS: Yes, I recognize it.

9 Q I couldn't hear you. I'm sorry.

10 A Yes, I recognize it.

11 Q Very generally describe for us what this video relates
12 to. Don't get into details. Just very generally what are you
13 seeing on this videotape?

14 A This shows the impact of shooting on a car, and at the
15 end of the video, we also see a terrorist with a green bandana
16 of Hamas on his head and an AKA-40A (sic) rifle.

17 Q Have you ever been to the scene of this attack?

18 A Many times.

19 Q When? When was the -- let me ask the question this way.
20 Were you at the scene of this attack on the day of the attack?

21 A No, I wasn't.

22 Q When were you at the scene of the attack after the
23 attack?

24 A About a week later and then several more times.

25 Q Now, from what you see on this video, can you personally

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1 identify the scene of this attack?

2 A Yes, I can identify the street or the alley, which is
3 adjacent to Tal Romeda.

4 Q Can you identify Yashef (phonetic) news for us?

5 A Yes, I know this news agency.

6 Q What is that news agency?

7 A Yes, this is a news agency that belongs to the settlers
8 in Samaria. It covers security events in the West Bank.

9 Q Given your investigation of this particular attack,
10 including the fact that you've been to the scene and that you
11 know this particular alleyway, can you identify with accuracy
12 that the person on the videotape is the suicide bomber on --
13 suicide shooter you had previously identified on your slide?

14 A I was not at the scene, at the time, but I can evaluate
15 through the video that this is the same man who committed the
16 attack.

17 MR. TURNER: May we show this brief clip?

18 THE COURT: No.

19 Q Have you, likewise, seen memorializations by -- published
20 by Hamas, glorifying this suicide shooting?

21 A Yes, I did.

22 Q And did that help inform your ultimate conclusions about
23 Hamas' role in this particular attack?

24 A Yes, it assisted me in reaching this conclusion.

25 Q Have you likewise had the opportunity to investigate the

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1 Bus 19 suicide bombing that occurred in Jerusalem, in January
2 of 2004.

3 A Yes, I did.

4 MR. TURNER: May we display the slide?

5 THE WITNESS: It was in January 2004.

6 MR. TURNER: May we display the slide?

7 THE COURT: Yes.

8 Q Were you able to identify the suicide bomber in the Bus
9 19 attack?

10 A Yes, I did identify him.

11 Q And were you able to determine whether or not the suicide
12 bomber acted alone, or whether the suicide bomber was acting
13 by or on behalf of Hamas?

14 A This terrorist did not act alone, and, in this case, he
15 was not only acting on behalf of Hamas, but also on behalf of
16 the al-Qassam Brigades that belong to Fatah.

17 Q On your slide, you've got a division, on the left-hand
18 side with the green, Hamas' role, and on the right-hand side,
19 al-Aqsa Martyrs Brigade (AAMB) role.

20 Can you explain to us when you found about Hamas'
21 role in this particular attack.

22 A With your permission, I would like to explain something.
23 I will begin with the suicide bomber. He volunteered to
24 Hamas, asked to be part of Hamas. He prepared for that
25 bombing within the Hamas organization, including preparing a

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1 video will, which he had read, including fitting him with an
2 explosive vest, and then he was transferred to the Israel
3 territory, but he was stopped at the roadblock. The two
4 people in the left-hand side of the slide are members of
5 Hamas, Nufal Adawin and Muhammad Nashash. Nashash was the one
6 who prepared the explosive belt, and Adawin prepared the
7 suicide bomber toward this Hamas attack, which, as I
8 explained, was not -- the end was not carried out. He was
9 stopped at the very last moment, when he was already with the
10 explosive belt on his body.

11 Q So did the bombing not occur?

12 A This terror attack, as it was planned by Hamas, was not
13 carried out.

14 Q So there was no bombing that occurred?

15 A There was a bombing, but it was carried out by another
16 organization.

17 Q Is that the al-Aqsa Martyrs Brigade shown on the other
18 slide?

19 A Yes, it was carried out by al-Aqsa Martyrs Brigade
20 people.

21 Q Now, explain how these two organizations, given your
22 investigation, how this suicide bombing was carried out?

23 A I would like to first of all emphasize that this is not a
24 joint venture of those two organizations. It's only a shared
25 claim of responsibility. Because after the planning of the

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1 attack and after the fact that it was intercepted for security
2 reasons that I have mentioned earlier, the Fatah people have
3 located this Jaara and saw him as the potential suicide
4 bomber. It was very, very easy, therefore, to mobilize him
5 for the mission, because he had already undergone the
6 preparations in Hamas. Ali Jaara was the ripe fruit in the
7 hands of the al-Aqsa Martyr Brigade; therefore, from the
8 minute he was found, and, therefore, later dispatched, they
9 didn't need too much preparation. They simply found the right
10 moment, they fitted him with explosive belt, transported him
11 to Jerusalem to carry out the attack.

12 This is why I see here a double responsibility, a
13 shared, a joint responsibility, both Fatah, a joint
14 responsibility for this attack, because without this basic
15 important preparation carried out by Hamas, I doubt whether
16 this terror attack would have been executed. And it was
17 executed because the suicide bomber was already prepared to
18 carry out the attack. I cannot determine whether he did this
19 with the fate of Hamas in his heart, because he is no longer
20 here; he is elsewhere.

21 The picture we can see, the bottom of the slide, the
22 way he was dressed in the Hamas clothes; behind him there's a
23 Hamas flag, and in his hand, the way I know the picture and
24 the video, he's holding the book of Quran, and the will was
25 written in his name as a member of Hamas.

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1 Q Now, were -- the two Hamas operatives shown on your
2 slide, Adawin and Nashash, were they ultimately convicted?

3 A Yes, they were both convicted by the Israeli court.

4 MR. TURNER: Your Honor, we would offer 4044 and
5 4045 as the Apostille or certified copies of convictions of
6 Adawin and Nashash.

7 THE COURT: Received over objection.

8 (Plaintiffs' Exhibit 4044, 4045 was received in
9 evidence.)

10 MR. TURNER: Show the witness 4049, please.

11 Q Can you identify 4049?

12 A Yes, I do.

13 Q What is 4049?

14 A This document is the official claim of responsibility by
15 Hamas organization for the bombing of Bus 19 by the suicide
16 bomber Ali Jaara.

17 Q And what is the source of 4049?

18 A The source is the official website of Hamas organization,
19 its military wing Qassam Brigade.

20 MR. TURNER: We offer 4049.

21 THE COURT: That's received over objection.

22 (Plaintiffs' Exhibit 4049 was received in
23 evidence.)

24 Q Did you likewise have access to an ISA report, confirming
25 your assessment Hamas did, in fact, play a role in carrying

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1 out this attack?

2 A Yes.

3 Q And did you likewise have access to other government
4 agency records, including from the Ministry of Foreign
5 Affairs, and also the Prime Minister's Office that further
6 confirmed Hamas' role in carrying out this terrorist attack?

7 A Yes, I did have the opportunity to see these documents
8 that confirmed the part Hamas played in this terrorist attack.

9 Q Did you likewise have access to a will of Ali Jaara
10 prepared by Hamas prior to this attack?

11 A Yes.

12 Q And did you likewise have any access to any
13 memorializations glorifying Ali Jaara, prepared by Hamas, as a
14 result of this attack?

15 A Yes, indeed, Hamas published various memorialization
16 materials in memory of Ali Jaara, being a member of Hamas.

17 MR. TURNER: Would you like to take a morning break,
18 or would you like me to move into the 24th attack?

19 THE COURT: And then you'll ender that?

20 MR. TURNER: Yes, sir.

21 THE COURT: Let's go ahead.

22 Q Did you have an opportunity to investigate the mortar
23 attack on September 24, 2004, at a place called Neve Dekalim?

24 A Yes, I did investigate it.

25 Q Now, first of all, tell us where Neve Dekalim is and the

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1 significance of that city.

2 A Neve Dekalim is a settlement in the Gaza Strip. It is a
3 relatively medium-sized locality that is at the distance of
4 sometimes dozens or hundreds of meters away from Palestinian
5 homes in the Gaza Strip. This place no longer exists because
6 it was evacuated, by the way.

7 MR. TURNER: May we display the slide for this
8 attack?

9 THE COURT: Yes.

10 Q First of all, can you describe for us -- in the context
11 of your investigation, were you able to identify specifically
12 who, the persons, in other words, that launched the mortars
13 into Neve Dekalim?

14 A One must remember that this particular terror attack,
15 that firing of mortars, is very different from all the others
16 that we have discussed so far; from the shooting attacks, from
17 laying bombs, and definitely, most certainly, from attacks
18 carried out by suicide bombers. Such an attack is carried out
19 from a distance. They launch the mortars, and in most cases
20 we cannot see who exactly launched that fire. It is hard to
21 determine who, specifically, the names of those people who
22 carried out the attack. Such details, if at all, can be
23 obtained not in every case by intel operations.

24 Q Now, in this particular attack, did you have access to
25 any government records relating to the investigation, for

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1 instance, the ISA report?

2 A In this case, I have to mention that I did see another
3 report that was published by the Prime Minister's Office. It
4 was not attached to my report because I only discovered it
5 after completing writing my report. In this report, they
6 disclose the killing of a terrorist.

7 MR. INGERMAN: Objection, your Honor. Move to
8 strike.

9 MR. TURNER: That's not in evidence. Let me -- I
10 have to ask the question first.

11 THE COURT: For the record, the objection is
12 sustained.

13 MR. TURNER: Explain to him that he can't answer
14 that question.

15 Q Now, during the course of your investigation, Mr. Shaked,
16 were you able to conclude that Hamas played a role in this
17 particular mortar attack?

18 A Yes.

19 Q And what is your conclusion?

20 A Hamas published his official claim of responsibility for
21 this terror attack carried out in Neve Dekalim. The claim of
22 responsibility was on the very same day that the terror attack
23 was conducted.

24 MR. TURNER: Show the witness 4073, please.

25 Q Can you identify 4073?

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1 A Yes, I can recognize it.

2 Q And what is 4073?

3 A In the upper part of this slide, you can see the official
4 claim of responsibility made by Hamas organization, stating
5 that it carried out the mortar fire attack on 24th September
6 2004 at 10:50 in the morning, and that was the Friday morning.

7 MR. TURNER: Okay. If we can offer that into
8 evidence, 4073.

9 THE COURT: Need a better foundation.

10 Q What is the source of 4037, sir?

11 A The official website of Qassam Brigade, the military wing
12 of Hamas.

13 THE COURT: That is received over objection.

14 (Plaintiffs' Exhibit 4037 was received in
15 evidence.)

16 MR. TURNER: May we display 473, the translated
17 investigation?

18 THE COURT: Yes.

19 MR. TURNER: If you can blow up the description once
20 it gets up on the screen, please. That's fine for right now.

21 Q First of all, Mr. Shaked, do you recognize the logo, the
22 emblem?

23 A I recognize the logo, yes.

24 Q And of what organization does that logo or emblem belong?

25 A This logo belongs to Qassam Brigades, military wing of

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1 Hamas.

2 Q The date 9/24/2004, is that the date of the mortar attack
3 at Neve Dekalim?

4 A Indeed so.

5 Q Now, are the facts that are described in the first
6 sentence -- specifically the Qassam Brigades claims full
7 responsibility for an operation of firing three 100-millimeter
8 mortar shells in the direction of the Neve Dekalim settlement,
9 at exactly 10:30 a.m. today, is that consistent with what your
10 investigation found, in terms of what transpired?

11 A Yes, it is consistent with my findings.

12 Q The sentence -- two sentences down from that, the
13 al-Qassam Brigades have already announced the mortar shells
14 were fired at the aforementioned settlement in proclamation
15 number 107/0409, which was issued at exactly 10:50 on Friday
16 morning, 10th of Shabon 1425, Hitiri 92404. Did you have
17 access to that proclamation?

18 A Yes, I did have such access.

19 Q And did that likewise confirm that Hamas played a role in
20 this particular attack?

21 A Yes.

22 MR. TURNER: Could you show the witness 4034,
23 please.

24 Q Can you identify 4074?

25 A Yes.

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1 Q What is 4074?

2 A This is the claim of responsibility for the terror attack
3 carried out at 10:30 on Friday, on the date of
4 September 24th, 2004.

5 Q What is the source of 4074?

6 A The official website of Qassam Brigades, the military of
7 Hamas.

8 MR. TURNER: We offer 4074.

9 THE COURT: That is received over objection.

10 (Plaintiffs' Exhibit 4074 was received in
11 evidence.)

12 Q Now, based upon your investigation, did you have anything
13 in terms of conviction or other government records, other than
14 what you've already mentioned, or memorializations for this
15 particular attack available for you to review?

16 A No, I didn't have any other terms of Hamas.

17 Q Now, based upon the information that you did have access
18 to, were you able to conclude what with a reasonable degree of
19 probability whether Hamas played a role in the mortar attack
20 at Neve Dekalim?

21 A We were talking about standard mortar bombs that were put
22 into use right at that time by Hamas. Hamas was the
23 organization, the only one that smuggled them into the Gaza
24 Strip, and was the only organization to use such bombs. So
25 this is yet another indication linking Hamas with the attack,

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1 along with the official claim of responsibility it issued.

2 Q As a result of your work on these 24 attacks -- it's
3 been, what, a day and a half almost two days since we began
4 going through all 24 attacks. Have you had an opportunity to
5 prepare charts that summarized the sources of information that
6 you had access to for each of the 24 attacks?

7 A Yes, I have.

8 MR. TURNER: Could you put the first chart in front
9 of the witness?

10 Q Can you identify these charts?

11 A Yes, I recognize what I have on my screen.

12 Q Were you able to put check marks in each of the
13 categories, running from left to right, across the top?

14 MR. TURNER: You can go ahead and put the check
15 marks in for him.

16 THE WITNESS: The sources that I have used, yes.

17 Q And do -- these sources that you have checked off, do
18 they constitute a summary of all the sources you had available
19 for each of the given attacks?

20 A I do hope that I have used all the sources that were
21 available to me and that I could reach in the period when I
22 wrote the report.

23 Q You've done this for each of the 24 attacks?

24 A For each of the attacks.

25 MR. TURNER: Your Honor, we would like to offer

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1 these three charts with the check marks, pursuant to Rule
2 1006, as summary charts.

3 THE COURT: All right. It's admitted over objection
4 as a summary.

5 (Plaintiffs' Exhibit 1006 was received in
6 evidence.)

7 MR. TURNER: And one moment, please.

8 (Pause in proceedings.)

9 MR. TURNER: The next in line number is 4790. And
10 may we display this very quickly?

11 THE COURT: Yes.

12 Q Display the first page, if you would, with the check
13 marks. And we have one of these pages for each attack; is
14 that correct, sir.

15 A That is correct.

16 MR. TURNER: Your Honor, with that, I pass the
17 witness -- there is one thing that -- I was given a note a
18 while ago. We offer into evidence as Exhibit 37-E3, and this
19 is from the Kiryat Arba attack, the conviction records for
20 al-Din Misk, which are Apostille.

21 THE COURT: Those are received over objection.

22 MR. TURNER: And with that, I pass the witness.

23 THE COURT: Ladies and gentlemen, let's take our
24 morning break. Please don't talk about the case amongst
25 yourselves or anyone else. We will reconvene at 11:30. See

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1 you in just a few minutes.

2 (Outside the presence of the jury.)

3 THE COURT: The witness may step down, and everyone
4 can sit.

5 One thing I want to raise with the parties, we had
6 talked about sitting on September 9th, and we had agreed that
7 Ms. Clark would approach the jury and see if they had any
8 problems with that.

9 MR. WERBNER: Was the 5th, wasn't it?

10 THE CLERK: The 5th.

11 THE COURT: Friday, I'm sorry. Juror Number 9 has a
12 problem. We don't know the nature of the problem. I'd like
13 the parties' permission to talk to her privately and see if I
14 can persuade her to reschedule whatever she has that day. Is
15 that okay?

16 MR. WERBNER: Yes, sir.

17 MR. STEPHENS: Okay.

18 THE COURT: Let's see what I can do.

19 (Recess in proceedings.)

20 (Proceedings continued on the following page.)

21

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PROCEEDINGS

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1 (Honorable Brian M. Cogan takes the bench.)

2 THE COURT: All right. Be seated. What's up?

3 MR. TURNER: I just have one process issue, I
4 wanted to make sure I understood. It goes back when
5 Mr. Geisser was here. I can't remember who was
6 cross-examining, but they were -- began to display things in
7 front of the jury without laying the foundation for them or
8 sharing them.

9 THE COURT: Okay. If it's not in evidence, they
10 can't do that, okay? You can show it to the witness first
11 and then offer it. And then if accepted, testify about it.
12 Only generic descriptions from the witness as to what the
13 witness is looking at if it's not in evidence.

14 MR. INGERMAN: I understand.

15 THE COURT: I spoke to juror number nine, and
16 she's going to rearrange her schedule so she we can sit next
17 Friday.

18 MR. WERBNER: Can I renew my motion regarding the
19 temperature? I mean, it's, like, really, really cold.

20 THE COURT: I will say when I walked in just now,
21 it seemed, to me, quite cold. But let me ask. I'll do it.
22 Again, don't be shy if people think it's too cold in here.

23 MR. WERBNER: I want to note this, one of the
24 jurors has a blanket covering her almost completely. I've
25 heard -- now they're whimpering out now, but I've heard a lot

R. SHAKED - CROSS/MR. INGERMAN

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1 of people.

2 THE COURT: Okay. We will turn up the temperature
3 somewhat and see if that alleviates it.

4 MR. WERBNER: Thank you.

5 (Jury is in the courtroom at 11:35 a.m.)

6 THE COURT: All right. Be seated, please.

7 Cross-examination.

8 MR. INGERMAN: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. INGERMAN:

11 Q Good morning, Mr. Shaked.

12 A Good morning.

13 Q We haven't met before. My name is Brett Ingerman. I
14 represent the bank in this case.

15 A I am --

16 Q Now, in the last two days we've heard a lot from you
17 about Hamas. And we can agree that Hamas is a criminal
18 terrorist organization, right?

19 A Yes.

20 Q And we can agree that Hamas commits horrible crimes
21 where they maim and kill innocent people; is that right?

22 A Yes.

23 Q In fact, it's hard to get our minds around how an
24 terrorist organization commits those acts; is that right?

25 A Yes.

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1 Q And you understand, do you not, that Hamas is not the
2 defendant that is on trial in this case?

3 A Yes.

4 Q Now, you speak English, correct?

5 A Not at the legal level.

6 Q Okay. But you speak some English?

7 A Yes.

8 Q And you read some English?

9 A Yes.

10 Q And you understand English?

11 A Yes.

12 Q But you're more comfortable having an interpreter in
13 court; is that right?

14 A Yes, and I said why.

15 Q Now, I want to talk a little bit about your testimony
16 with respect to Hamas not being a secretive organization.

17 Now, you testified, if my notes are correct, that
18 Hamas was not a secret organization, right?

19 A That is correct.

20 Q And that everyone knew what the Hamas structure was?

21 A I didn't say "everyone" I said those who needed to
22 know.

23 Q Okay. Who were those that need to know?

24 A We start with the general public, media people,
25 government people, people who live in a neighborhood where

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1 there are Hamas people, people who need services from Hamas,
2 or any other contact with Hamas, people who want to join
3 Hamas, et cetera.

4 Q Would you agree with me, Mr. Shaked, that during the
5 2000 to 2004 time period, that Hamas members -- most Hamas
6 members want to keep their membership secret?

7 A No, only the people of the military wing of Hamas
8 wanted to keep their identity secret.

9 MR. INGERMAN: Sean, can we pull up, Mr. Shaked's,
10 deposition page 59, lines 17 to 22.

11 Q Now, Mr. Shaked, you remember you had your deposition
12 taken in this case, right?

13 A Yes.

14 Q And you were asked a number of questions and gave a
15 number of answers under oath, correct?

16 A Yes.

17 Q Then you had an opportunity to review the deposition
18 transcript and make any corrections, right?

19 A Yes.

20 MR. SHAND: Okay. Sean, can we put up on the
21 screen page 59 line 17 to 22. Your Honor, I'd like to
22 display this to the jury as well.

23 THE COURT: Okay.

24 Q Now, Mr. Shaked, do you remember being asked the
25 question at line 17: "In your experience, do most Hamas

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1 members want to keep their membership secret?"

2 And would you please read the answer for me, and
3 we'll have the translator -- can you read English?

4 THE COURT: I don't think this is the way to
5 proceed. I think what you have to do is you have to read
6 him the question and the answer and then say to him, were
7 you asked this question and did you give this answer.

8 MR. INGERMAN: That's where I was headed with the
9 translation. Thank you, your Honor.

10 Q So, Mr. Shaked, you were asked the question: "In your
11 experience, do most Hamas members want to keep their
12 membership secret?" And you gave the following answer: "In
13 the period we're talking about, many of them wanted to keep
14 it a secret, because they were afraid of being arrested."

15 Is that the answer you gave at your deposition?

16 A Yes, this is what I said.

17 Q Okay. Now, the Israel Security Agency puts a lot of
18 money -- strike that.

19 In the 2000 to 2004 time period, the Israel
20 Security Agency put a lot of time and money and effort into
21 trying to stop terrorist attacks in Israel, isn't that
22 right?

23 A Correct.

24 Q And it wasn't only the Israel Security Agency that was
25 trying to prevent terrorist attacks during this time period,

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1 it was also the Israel defense forces as well, correct?

2 A Yes.

3 Q But it was also the Israel Police, correct?

4 A Correct.

5 Q And there was a secret police called the Mossad that
6 was trying to prevent terrorist attacks during this time
7 period; is that right?

8 A That is correct.

9 Q And all of those organizations within Israel were
10 trying to figure out who the Hamas military members were who
11 were going to be carrying out suicide bombings and other
12 terrorist attacks, correct?

13 A That's right.

14 Q And notwithstanding all of these resources as part of
15 Israel government, the Israel government wasn't able to stop
16 any of these 24 attacks that we're here about; is that
17 right?

18 A Correct.

19 Q And if the Israel government knew who these Hamas
20 operatives were that were going to carry out these attacks,
21 what would they have done?

22 A It would thwarted their activity.

23 Q They would have been arrested?

24 A Of course.

25 Q Or they would have been killed?

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1 A I can't say that, but they would have stopped them,
2 taken steps against them.

3 Q Now, during your direct examination you were shown by
4 Mr. Turner a document that was a designation by the United
5 States government of certain terrorists. Do you recall
6 that?

7 A Yes.

8 Q And they were designated on what is known as the OFAC
9 list, right?

10 A I'm not a legal man. I know that they were designated
11 in this list without a real understanding the meaning of the
12 designation.

13 Q You don't understand the meaning of the designation
14 that Mr. Turner showed you during your direct examination?

15 A Yes, I do.

16 Q Okay. And you understand that countries around the
17 world have these lists that are called blacklists where
18 terrorists and other criminals are designated?

19 A That's right.

20 Q And it's true, is it not, that not a single person, not
21 a single picture of a single person in any of the slides
22 that you presented to this jury for any of the attacks is
23 designated on any list anywhere in the world?

24 A I am not familiar with all of those lists, but in the
25 slides, as far as I know, they're not the same people.

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1 Q Now, Mr. Shaked, I want to talk a little bit about your
2 qualifications.

3 A Yes.

4 Q I apologize, what is it that you do right now,
5 presently?

6 A I am a researcher at the Truman Institute, Hebrew
7 University of Jerusalem at the Middle Eastern Desk.

8 Q When did you start that job?

9 A In 2012.

10 Q Okay. And prior to 2012, you were a newspaper reporter
11 at the newspaper Yediot Ahronot, correct?

12 A Correct.

13 Q And you started at Yediot Ahronot in 1982?

14 A Yes, at the end of 1982.

15 Q So from 1983 to 2012, your principle employment was
16 being a newspaper reporter; is that correct?

17 A Yes, that was my principle occupation, but not the only
18 one.

19 Q You have no professional training in determining which
20 terrorist organization is responsible for committing a
21 particular attack, isn't that true?

22 A That is correct.

23 Q And you've never been a prosecutor, correct?

24 A No.

25 Q You have no legal training?

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1 A No.

2 Q You're not a lawyer?

3 A No.

4 Q You've never been a member of the Israel Police,
5 correct?

6 A No.

7 Q And you left the Israel Security Agency in 1982, right?

8 A Correct.

9 Q And that was five years before Hamas was even formed,
10 correct?

11 A Correct.

12 Q Now, during the time that you were a newspaper reporter
13 at Yediot Ahronot, it's true, is it not, that you were
14 suspended in 1999 for publishing incorrect facts in one of
15 your newspaper articles?

16 A Yes, that is correct, I was suspended.

17 Q Now, let's talk a little bit about the methodology by
18 which you arrived at your opinions offered to the jury in
19 this case.

20 The methodology that you use to offer your
21 opinions to the ladies and gentlemen of the jury is very
22 important, is it not?

23 A Yes.

24 Q And you developed this methodology that you use all by
25 yourself, right?

R. SHAKED - CROSS/MR. INGERMAN

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1 A Almost all of it, yes.

2 Q And you developed it for purposes of these cases, this
3 litigation; is that right?

4 A Among other things, yes.

5 Q And you named the methodology the Ronni Shaked
6 Methodology; is that right?

7 A In the deposition they named it like this, but you can
8 call it anyway you like.

9 Q You named it that way, didn't you?

10 A I repeated laughing what the respectable lawyer had
11 said.

12 Q Okay. The lawyer asked you, does your methodology have
13 a name, and you called it the Ronni Shaked Methodology,
14 right?

15 A Yes, but that was when we were talking on both sides
16 and they came from him. He was the one who wanted to
17 emphasize it.

18 Q Now, Mr. Shaked, you've been hired by the same
19 plaintiffs lawyers not only in this case, but in other
20 cases, isn't that right?

21 A Yes, correct.

22 Q How many other cases are you working for these
23 plaintiffs lawyers in?

24 A Two other cases.

25 Q And how much have you been paid by the plaintiffs

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1 lawyers for your work in all of these cases?

2 A About \$96,000. I don't know the exact amount, but
3 about that.

4 Q Okay. And are you owed any money by them?

5 A Yes, for the last period.

6 Q Which is how much?

7 A I think it's 20 to \$22,000, if I'm not mistaken.

8 Q So about \$120,000 all in?

9 A I imagine so.

10 Q Other than the cases you've been hired by these
11 plaintiffs lawyers, have you used your Ronni Shaked
12 Methodology in any other cases?

13 A I was not asked to use it.

14 Q And you're not aware of anyone else that uses the
15 methodology that you've employed as you've presented it here
16 to the ladies and gentlemen of the jury, isn't that right?

17 A I recently read an article by Lila Rose, a
18 distinguished professor from the United States, who used
19 very similar methods to mine to diagnosis Hamas and other
20 types of organizations.

21 Q Do you remember when you had your deposition taken?

22 MR. INGERMAN: Sean, if we can pull up page 27,
23 lines nine through 16, please. Your Honor, if we can
24 publish that to the jury?

25 THE COURT: Okay.

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1 Q Now, Mr. Shaked, at your deposition you were asked the
2 following question: "Has anyone else other than you, used
3 the Shaked Methodology?" And your answer was: "As far as I
4 remember. And to the best my knowledge I didn't find anyone
5 else who dealt with this specific subject; therefore, I
6 didn't find any use of it."

7 Do you see that? You gave that answer to that
8 question at your deposition, did you not?

9 A Yes, I did give such an answer before I read Professor
10 Rose's book.

11 Q Now, am I right that the Israel Security Agency doesn't
12 use the Ronni Shaked Methodology, am I right?

13 A I don't know, I am no longer there.

14 Q Do you know whether judges use the Shaked Methodology?

15 A I cannot recall a case in which this methodology had to
16 be used.

17 Q Now, during the course of your work, you have
18 personally received -- strike that.

19 During the time that you were at the newspaper
20 Yediot, you personally received E-mail claims of
21 responsibility during the time that you were there, isn't
22 that right?

23 A Yes, this is correct.

24 Q And sometimes they were true and sometimes they were
25 not true?

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1 A This is correct.

2 Q Now, as part of your methodology, you rely on, among
3 other things, newspaper articles, right?

4 A Yes.

5 Q And you agree with me that sources like CNN, the Cable
6 News Network are a reliable source of information?

7 A Yes, one can rely on them with respect to the time that
8 the broadcasts are being made.

9 Q Now, you told the ladies and gentlemen of the jury
10 about certain interviews of certain terrorists that you
11 relied on in developing your opinions, right?

12 A Yes, I did rely on interviews.

13 Q And when you conducted those interviews, am I right
14 that those terrorists were not under oath as you are here
15 today before the jury, right?

16 A No, but the terrorists that I interviewed in prison
17 gave me declaration or statement that they made that they
18 were giving the interview out of their own free will, not
19 under any duress.

20 Q And you believe that what these terrorists told you was
21 true?

22 A I believe that what they said was the truth.

23 Q Now, you also rely on -- and I think you've shown the
24 ladies and gentlemen of the jury a number of materials from
25 the internet, am I right?

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1 A That is correct.

2 Q And you'd agree with me that when it comes to the
3 internet, anyone can write anything on the internet?

4 A I'm not an internet expert. I do not know how one
5 writes on the internet, but I do know there are websites
6 where people can write what they want. I don't know if that
7 applies to official websites of organizations or groups.

8 MR. INGERMAN: Sean, can we take a look at
9 Mr. Shaked's deposition testimony, page 94, lines five
10 through ten.

11 Your Honor, I'd like to display that to the jury.

12 THE COURT: Okay.

13 Q Now, at your deposition, Mr. Shaked, when you were
14 under oath, you were asked the question: "Do you agree that
15 when it comes to relying on the internet, anybody can write
16 anything on the internet?" And you gave the answer: "Yes."

17 Correct?

18 A Yes.

19 Q Now, can we also agree that Hamas websites on the
20 internet exaggerate?

21 A Yes. And I also found exaggerations on internet
22 websites of Hamas.

23 Q In fact, on the internet website for Hamas al-Qassam,
24 you found that Hamas makes great exaggerations on that
25 website, didn't you?

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1 A I did not know if I actually said great exaggerations,
2 but I can give you examples with the type of exaggerations I
3 related. That pertains to the number of people they killed,
4 which is not in line with the actual number of people, and
5 also the number of injured people, or the way the operation
6 was carried out. Such exaggerations portray the
7 perpetrators of the attack, but it's not the kind of
8 exaggerations that relates to things that never happened.

9 MR. INGERMAN: If we can take a look, Sean, at
10 page 150 of Mr. Shaked's deposition, lines four through 14.

11 And I'd like to display that to the jury.

12 Q Now, at your deposition, Mr. Shaked, you were asked the
13 following question: "Does www.alqassam.ps make mistakes?"
14 And your answer was: "I can estimate that they were trying
15 to do reliable, but of course they view reality through
16 their own spectacles."

17 Did you give that answer?

18 A Yes, that was my answer.

19 Q And then you were asked: "Do they make factual
20 mistakes on important facts?" And your answer was:
21 "Sometimes there are great exaggerations, yes."

22 That was your answer, correct?

23 A Yes. What I meant was the number of fatalities or the
24 number of injured people, these are the many exaggerations
25 that I meant.

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1 MR. INGERMAN: Okay. We can take that down, Sean.
2 Thank you.

3 Q Now, Mr. Shaked, you testified that over the years
4 you've come to know personally some of the Hamas leaders,
5 isn't that right?

6 A Yes, this is correct. I know many of Hamas leaders.

7 Q You mentioned Rantisi being one, correct?

8 A Yes, I did mention the name of Abd al-Aziz al-Rantisi.

9 Q And Sheikh Ahmed Yassin?

10 A Yes, Sheikh Ahmed Yassin, too.

11 Q And you'd agree with me that Hamas leaders on occasion
12 have provided you with false information?

13 A Perhaps in any conversations with them they provided me
14 with false information, but I did know how to see through it
15 to figure it and to glean the truth from it.

16 Q So you were able to figure out when the terrorist
17 leaders were telling you the truth and when they were lying;
18 is that your testimony?

19 A I cannot say that I always know to distinguish truth or
20 lies, but I can say that based on many years of experience
21 both in the ISA and in my work in the newspaper, I learned
22 how to make the distinction and to compare those reports
23 with the reality, the existing reality, and to evaluate
24 whether that was an exaggeration or truth telling.

25 And I must add one more thing. That even when I

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1 received this information in those interviews, I would
2 always crosscheck them with other sources to confirm. And
3 so I know that, indeed, because I know that the people who
4 gave me and provided me with this information had certain
5 intentions to convey, certain messages.

6 Q And that's because sometimes the terrorist leaders have
7 an incentive to lie, right?

8 A Such senior leaders of such stature, they know that
9 lies do not live very long, they are very short-lived. So I
10 do hope they did not mean to lie when they talked with me.

11 Q Now, can we agree, Mr. Shaked, that terrorist groups
12 operating in Israel and the Palestinian Territories between
13 the years of 2000 and 2009 had an incentive to claim
14 responsibility for terrorist attacks?

15 A Of course they did.

16 Q And would you agree with me that it is or it was in the
17 terrorist group's best interest to actually claim
18 responsibility for a terrorist attack?

19 A Yes. They did want to claim responsibility for the
20 terror attack that they perpetrated.

21 Q Because it was in their interest to do so, right?

22 A Yes, it was within their interest. It's the nature of
23 terror.

24 Q And that's important because there is fierce
25 competition between the terrorist groups in Israel during

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1 this timeframe, isn't that right?

2 A There was competition among organizations, yes.

3 Q And by claiming responsibility for a terrorist attack,
4 a particular terrorist group gains political clout, correct?

5 A That is correct.

6 Q It increases their popularity?

7 A If the population understands that this is a truthful
8 report, then it increases their popularity; if not, it
9 damages them.

10 Q It helps them raise money, right?

11 A This is one of the ways that assists them.

12 Q And they can use it for propaganda purposes?

13 A Yes, but with the permission of the distinguished
14 lawyer I would like to mention that here we are talking not
15 about separate organizations, this organizations are
16 embedded in identifying who is who and what is what. Lies
17 are discovered very, very quickly. This is a traditional
18 society with very, very dense social network where it is
19 very, very easy to detect lies, extremely fast.

20 I'll give you an example, with your permission.
21 If, for example, a certain individual gets killed by
22 perpetrating an attack, it is extremely easy to identify the
23 organization he belonged to judging by the symbols and the
24 speeches made and very same standards that I used in the
25 criteria in my methodology. It is very, very easy and the

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1 public knows that.

2 Q Now, let's talk about some of the terrorist groups that
3 were claiming responsibility for attacks in Israel between
4 2000 and 2004.

5 A Please.

6 Q One of those organizations was of course the al-Qassam
7 Brigade, which is Hamas, right?

8 A Yes, this is the military wing of the Hamas
9 organization.

10 Q Another terrorist organization that was active, for
11 lack of a better term, during this time period was the
12 al-Aqsa Martyrs Brigade?

13 A Yes. The military wing of the Fatah organization.

14 Q And Fatah is different than Hamas, right?

15 A Definitely so.

16 Q And another organization that was active in Israel and
17 the Palestinian Terrorists that was promoting terror was the
18 al-Quds Brigade, correct?

19 A The Jerusalem Brigade, correct.

20 Q And that's part the Palestinian Islamic Jihad, correct?

21 A Yes, it is the military wing of the Islamic Jihad.

22 Q And yet, there was another terrorist organization at
23 the time in the Israel and Palestinian Territories and that
24 was called Hezbollah, correct?

25 A In this particular timeframe this activity in the

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1 territories was extremely limited, but it was somewhat
2 active, yes.

3 Q And Hezbollah is a Lebanese terrorist group founded by
4 Iran, correct?

5 A This is correct.

6 MR. INGERMAN: Your Honor, if I may approach, I
7 have a demonstrative that just lists out the four groups
8 that we just talked about that I'd like to put up on the
9 stand here.

10 THE COURT: Have you shown it to the plaintiffs?

11 MR. INGERMAN: I will do that right now.

12 MR. TURNER: No problem.

13 THE COURT: Okay.

14 MR. INGERMAN: Thank you. Mr. Shaked, I've put up
15 on the stand here -- you can't see this, let me show you.
16 It's a board that's entitled, "Claims of Responsibility,"
17 and it lists the four groups we just talked about; al-Aqsa
18 Martyrs Brigade from Fatah, al-Quds Brigades from the
19 Palestinian Islamic Jihad, Hezbollah and Hamas, okay?

20 A Yes, these are some of the Palestinian groups.

21 Q Okay. I'm going to leave that up there for some of the
22 examination here, because we're going to refer to some of
23 the different groups.

24 Now, the plaintiffs lawyers in this case asked you
25 to look at these 24 attacks to determine whether or not they

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1 were the responsibility of Hamas, right?

2 A Correct.

3 Q And you were paid about \$120,000 to do that, right?

4 A Yes.

5 Q And low and behold, you claimed that all 24 attacks
6 were the responsibility of Hamas, right?

7 A Yes.

8 Q Let's take a look at the Bus 19 bombing, if we could.

9 Now, the Bus 19 bombing occurred on January 29,
10 2004, right?

11 A Correct.

12 Q And you were aware, were you not, that there were a
13 number of claims of responsibility for this attack from
14 groups other than Hamas?

15 A Correct.

16 Q And you knew, for instance, on the day of the bombing,
17 a newspaper by the name of "Israel Insider" reported that
18 Fatah's al-Aqsa Martyrs Brigade claimed responsibility,
19 isn't that right?

20 A Yes, I knew this.

21 MR. INGERMAN: And if we could put up just for the
22 witness, Sean, Defense Exhibit 1016.

23 Q You recognize this as a claim of responsibility in the
24 Israel Insider, yes?

25 A Yes, this is what the paper reported.

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1 MR. INGERMAN: Your Honor, I move admission for
2 Defense Exhibit 1016.

3 MR. TURNER: No objection.

4 THE COURT: It is received.

5 (Defense Exhibit 1016 was admitted into evidence.)

6 Q Now, you also knew that on the same day as the Bus 19
7 bomber, that the Israeli Prime Minister's Office came out
8 and said that the bomber, Jaara, is a member of the military
9 arm of Fatah, correct?

10 A Yes, I know that.

11 MR. INGERMAN: If we could put before the witness,
12 Sean, Defense Exhibit 10:30.

13 Q You recognize that to be the Israeli Prime Minister's
14 Office release?

15 A Yes, this is the prime minister's office release.

16 MR. INGERMAN: Your Honor, I move defense
17 Exhibit 10:30.

18 MR. TURNER: I thought you already ruled on the
19 prime minister exhibits. I object.

20 THE COURT: I did. Sustained.

21 BY MR. INGERMAN:

22 Q But you knew, did you not, that the Israeli Prime
23 Minister's Office had identified the bomber on Bus 19,
24 Jaara, as a member of the al-Aqsa Martyr Brigade, military
25 arm of Fatah?

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1 A Yes. On the day of the bombing he was identified as a
2 member of the al-Aqsa Brigade.

3 Q Now, you also knew, did you not, that a day later on
4 January 30, 2004, a day after the Bus 19 bombing, the New
5 York Times reported that the al-Aqsa Martyr Brigade claimed
6 responsibility for the attack, right?

7 A That is correct.

8 MR. INGERMAN: And if we could put before just the
9 witness, Defense Exhibit 1019, Sean.

10 Q That is the New York Times article we were just
11 referring to, correct?

12 A Yes.

13 MR. INGERMAN: Your Honor, I'd move DX 1019.

14 THE COURT: Let's have a sidebar, please.

15 Unless the plaintiff is going to tell me they
16 don't object.

17 MR. TURNER: I do object.

18 MR. INGERMAN: I didn't hear what he said, did he
19 say that he has no objection?

20 THE COURT: No, he objects.

21 (Continued on the next page for sidebar.)
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23
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25

SIDEBAR CONFERENCE

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1 (Sidebar conference begins.)

2 THE COURT: I'm not sure I understand the
3 defendant's position on this. The plaintiff had offered a
4 number of newspaper articles and prime minister press
5 releases, which I excluded on the ground of hearsay. I
6 don't see how your newspaper articles and prime minister
7 press releases are any less hearsay.

8 MR. INGERMAN: Well, for starters, we're not
9 offering them for the truth of the matter asserted. We are
10 offering them to impeach the witness.

11 THE COURT: No. They impeach the witness by
12 showing that, in fact, somebody else did it, that's what it
13 says. That's how they impeach the witness. You can
14 question him about them, but the article don't come in. You
15 can say, are you familiar with those? Did you know that
16 prime minister said so and so claimed responsibility? But
17 if the article were to come in, I can't think of a reason
18 that you would be offering it other than to impeach him by
19 showing that what he's saying is wrong that somebody else
20 committed the crime, someone who he has not identified.

21 MR. INGERMAN: Well, if it's quoting a terrorist
22 group claiming responsibility, then it's a declaration
23 against interest.

24 THE COURT: Well, yeah, but that's the first level
25 of hearsay. I mean, that's the second level of hearsay.

SIDEBAR CONFERENCE

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1 The first is that it's a newspaper article, it's not the
2 group. That's why I didn't let them put in the newspaper
3 articles when you objected. All right?

4 If you have some primary source as they did of a
5 terrorist group taking responsibility, then yes, I'll admit
6 those, but not newspaper articles. Okay?

7 (End of sidebar conference.)

8 (Continued on the next page.)

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1 MR. INGERMAN: May I proceed, your Honor?

2 THE COURT: You may. As soon as the reporter is
3 ready.

4 MR. INGERMAN: She's the second most important
5 person in the room.

6 BY MR. INGERMAN:

7 Q When we broke we were talking about DX 1019; that is
8 the New York Times article that you had seen before that
9 refers to the claim by the al-Aqsa Martyrs Brigade for the
10 Bus 19 bombing; is that correct?

11 A Correct.

12 Q Now, you also knew that on January 30, 2004, the day
13 after the Bus 19 bombing, that the Israeli newspaper Haaretz
14 also published a claim of responsibility by Fatah for the
15 Bus 19 bombing, correct?

16 A Correct.

17 Q And then on that same day, January 30, 2009, one day
18 after the Bus 19 bombing, you, yourself, wrote an article
19 about the bombing, didn't you?

20 A That is correct, I did.

21 Q And you didn't tell the ladies and gentlemen of the
22 jury about that during your description of the Bus 19
23 bombing, correct?

24 A If I may explain in actual; according to my
25 methodology, I do not make any statements in a perspective

R. SHAKED - CROSS/MR. INGERMAN

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1 one day after the attack. I do an in-depth check of all the
2 events and all the facts that I have. So one day after the
3 attack, it was possible that all the journalists, including
4 myself, said that it was the al-Aqsa Martyrs Brigade that
5 was responsible.

6 But I am not here as a journalist, and I am not
7 here as an ISA researcher to provide immediate answers
8 within an hour, I am here as an expert witness, and I do my
9 work with a prospective of time, and this is why I answered
10 the way I did.

11 MR. INGERMAN: Sean, if we could put before the
12 witness, Defense Exhibit 1038, please.

13 Q Is this the newspaper article that you wrote in the
14 Yediot Ahronot newspaper on January 30, 2004, about the
15 Bus 19 bombing?

16 A Yes, I did write this article.

17 MR. INGERMAN: Your Honor, I move defense
18 Exhibit 1038 in.

19 THE COURT: Any objection?

20 MR. TURNER: No objection to that.

21 THE COURT: It is received.

22 (Defense Exhibit 1038 was admitted into evidence.)

23 MR. INGERMAN: Your Honor, may I publish it to the
24 jury?

25 THE COURT: You may.

R. SHAKED - CROSS/MR. INGERMAN

1278

1 MR. INGERMAN: If we could go to the English
2 translation, Sean, please. And blow up the title for a
3 moment.

4 Q The article that you wrote, Mr. Shaked, on January 30,
5 2004, the title was, "The Promises That Nasralla Made." And
6 then it says, "Hezbollah easily penetrated the anarchy
7 existing in the territories."

8 Do you see that?

9 A Yes.

10 MR. INGERMAN: And then in the first -- I'm sorry,
11 the second paragraph, Sean, the first two sentences.

12 Q You say Ali Jara. Now, Ali Jara was the person who you
13 told the ladies and gentlemen of the jury was the bomber for
14 Bus 19, right?

15 A Correct.

16 Q And what you wrote in the newspaper on January 30th is,
17 "Ali Jara of Daheyshe, the terrorist who committed suicide
18 in Jerusalem yesterday was a member of the al-Aqsa Martyrs
19 Brigade, the military arm of the Fatah."

20 Do you see that?

21 A Correct.

22 (Continued on the next page.)

23

24

25

SHAKED - CROSS - INGERMAN

1279

1 Q Now, if we can go down to the fourth paragraph, the
2 first sentence. You also wrote about the bus 19 bombing,
3 "The attack yesterday had the Hezbollah's prints on it."

4 Do you see that?

5 A That is correct.

6 Q And am I right that you never even to this day issued a
7 retraction of this article in any way?

8 A Yes. There was never a retraction, but it was not my
9 fault. It was the paper's fault, because on the annual
10 report that I prepared for -- about all the attacks, the
11 editor decided not to publish this.

12 Q Now, when you wrote this article on January 30th, 2004,
13 were you hired by the plaintiffs' lawyers yet?

14 A No, of course not. And I published this article one
15 day after the attack. And I had the perspective of maybe
16 less than ten hours.

17 Q Now, do you also know what the Intelligence and
18 Terrorism Information Center at the Center for Special
19 Studies is?

20 A Yes.

21 Q And you also know that on January 1st of 2006, two
22 years after the bus 19 bombing, the Intelligence and
23 Terrorism Information Center at the Center for special
24 Studies concluded that the organization responsible for the
25 bus 19 bombing was the Fatah al-Aqsa Martyrs Brigade,

SHAKED - CROSS - INGERMAN

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1 correct?

2 A Yes.

3 Q Now, you also knew, did you not, that the National
4 Counter Terrorism Center in 2010 attributed the bus 19
5 bombing to Fatah al-Aqsa Martyrs Brigade, correct?

6 A I don't remember such a publication, but if you say so,
7 I believe you.

8 Q Well, I appreciate that, but I don't want you to take
9 my word for it.

10 MR. INGERMAN: Let's show just the witness,
11 please, Sean, DX1036.

12 BY MR. INGERMAN:

13 Q Have you seen that before, sir?

14 A Yes.

15 MR. INGERMAN: Okay. And if we can go to the next
16 page of it, Sean.

17 Can we go to January 21st. I'm sorry, January
18 29th. Blow that up for the witness. Hopefully he'll be
19 able to see it, as will I.

20 BY MR. INGERMAN:

21 Q Does that refresh your recollection, Mr. Shaked, that
22 in 2010 the National Terrorism Center concluded that the
23 Israel al-Aqsa -- the al-Aqsa Martyrs Brigade bus bomb in
24 Jerusalem -- I'm sorry. Start over again.

25 That the bus 19 bus bombing was carried out by the

SHAKED - CROSS - INGERMAN

1281

1 al-Aqsa Martyrs Brigade?

2 A Yes.

3 MR. INGERMAN: Now, if we can show just the
4 witness Defense Exhibit 1040.

5 BY MR. INGERMAN:

6 Q This is called a RAND Homeland Security Report. You
7 are aware, were you not, that the RAND Homeland Security
8 Report also concluded that the al-Aqsa Martyrs Brigade was
9 responsible for the bus 19 bombing?

10 A Correct.

11 MR. INGERMAN: This would be a good point for a
12 lunch break if you'd like.

13 THE COURT: Okay. We can break now.

14 Ladies and gentlemen, please don't talk about the
15 case amongst yourselves or with anyone else. We'll see you
16 back here at 1:40. Have a good lunch.

17 (Jurors exit the courtroom.)

18 THE COURT: Recess till 1:40.

19 (Continued on the next page.)

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22

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25

Shaked - Cross- Ingerman

1282

1 (In the presence of the jury.)

2 THE COURT: Be seated, please. Welcome back, ladies
3 and gentlemen. Let's continue with cross-examination

4 MR. INGERMAN: Thank you, your Honor.

5 Q Now, Mr. Shaked, before we broke for lunch, we were
6 talking about the Bus 19 bombing, on January 29th, 2004,
7 correct?

8 A Yes.

9 Q And I had asked you about a document from the National
10 Counterterrorism Center, in which there was a recognition that
11 Fatah, the al-Aqsa Martyrs Brigade, was responsible for the
12 Bus 19 bombing; do you remember that? And that document was
13 dated 2010?

14 THE COURT: Wait. You didn't get the answer in yet.

15 Q And that was in 2010, right?

16 A Yes.

17 Q And you know, do you not, that the National
18 Counterterrorism Center is a United States Government
19 organization responsible for national and international
20 terrorism effort, right? And we also looked at, in connection
21 with the Bus 19 bombing, a document that you had seen before,
22 put out by the RAND Corporation; do you remember that?

23 A Yes.

24 Q And the RAND Corporation document also explained that the
25 al-Aqsa Martyrs Brigade from Fatah was responsible for the Bus

Shaked - Cross- Ingerman

1283

1 19 bombing, right?

2 A Yes.

3 Q And you know that the RAND Corporation report that I
4 showed you was commissioned by the United States Department of
5 Homeland Security, correct?

6 A That's correct.

7 Q Okay. Now, I want to talk a little bit with you about
8 what exactly happened in connection with the Bus 19 bombing.
9 And what I'm going to do is -- I'm actually going to put up
10 your slide, shown on, I think it's, Plaintiffs' slide 51.

11 MR. INGERMAN: Your Honor, may I display that to the
12 jury?

13 THE COURT: You may.

14 Q Now, this is the slide that you went through with
15 Mr. Turner about what happened in connection with the Bus 19
16 bombing, on January 29, 2004, right?

17 A Yes.

18 Q And you created this slide, correct?

19 A Yes.

20 Q Okay. Now, I want to take a look for a moment. In the
21 upper left-hand corner there's a man by the name of Nufal
22 Adawin; do you see that?

23 A Yes.

24 Q And I think Mr. Turner showed you and put into evidence
25 the verdict and sentencing for Mr. Adawin, correct?

Shaked - Cross- Ingerman

1284

1 A Yes.

2 Q And that conviction of Mr. Adawin, Nufal -- I call him
3 Nufal, if that's okay with you?

4 THE INTERPRETER: Was that a question? I'm sorry.
5 I didn't get the question.

6 Q I will call him Nufal so we understand each other, if
7 that's okay with you?

8 A That's fine.

9 Q Thank you. Now, Nufal was convicted based on a
10 confession that he gave; isn't that correct?

11 A Yes, that's correct.

12 MR. INGERMAN: And if we could put before just the
13 witness shown on Defense Exhibit 1039.

14 Q Do you recognize that to be Nufal's confession?

15 A This is his confession in the police, yes.

16 Q And this is something that you looked at in connection
17 with your work in this case, right?

18 A Yes, that's correct; I have looked at it.

19 MR. INGERMAN: Your Honor, I move admission of
20 Defense Exhibit 1039.

21 THE COURT: Any objection?

22 MR. TURNER: Is this the conviction?

23 THE COURT: No, this is the confession.

24 MR. TURNER: I think that's part of it, but we have
25 no objection.

Shaked - Cross- Ingerman

1285

1 THE COURT: It's admitted.

2 (Defense Exhibit 1039 was received in evidence.)

3 Q Now, Nufal's confession was read to him and signed by
4 him, correct?

5 A Yes.

6 Q And what -- and in this confession, Nufal explains in
7 detail what happened in connection with the Bus 19 bombing;
8 isn't that correct?

9 A He tells about all his connections with Ali Jaara,
10 because he didn't carry out the Bus 19 bombing.

11 Q Okay. So Mr. -- or Nufal, in his confession, says that
12 in the beginning of 2004, he had a friend named Muhammad
13 Nashash come to him, correct?

14 A Yes, that's correct.

15 Q And in your report and in your slide -- if we can put
16 back up slide 51 -- you identify Muhammad Nashash as a member
17 of Hamas, correct?

18 A Yes, that's correct.

19 Q Now, you know, do you not, Mr. Shaked, that in
20 Mr. Muhammad Nashash's sentencing, in connection with the Bus
21 19 bombing, he's actually identified and convicted as being a
22 member in an unauthorized association called al-Aqsa Martyrs
23 Brigade Fatah; isn't that right?

24 A With your permission, may I see the paper you're talking
25 about?

Shaked - Cross- Ingerman

1286

1 MR. INGERMAN: Please can we show the witness
2 Plaintiffs' Exhibit 4045. Just the witness, please.

3 Q Before using Plaintiffs' Exhibit 4045, which is Muhammad
4 Nashash's conviction and sentencing in connection with the Bus
5 19 bombing, you've seen that document before, sir?

6 A I've seen it, but if you could raise it a bit, pull it up
7 so I can see the names.

8 Q Whatever you like.

9 MR. INGERMAN: Shawn, can we make it a little bigger
10 for Mr. Shaked?

11 THE WITNESS: Not bigger. Scroll it.

12 Q Scroll down. I'm sorry. To the first page?

13 A To the other page.

14 Q One more page?

15 A Now, I can see it.

16 Q Okay. And this is the verdict and sentencing for
17 Muhammad Nashash, the person you claim is a part of Hamas, in
18 connection with the Bus 19 bombing, correct?

19 A Yes.

20 MR. INGERMAN: Your Honor, I would move Plaintiffs'
21 Exhibit 4045.

22 THE COURT: Any objection?

23 MR. TURNER: This is already in evidence.

24 MR. INGERMAN: Then I don't need to move it.

25 THE COURT: Okay.

Shaked - Cross- Ingerman

1287

1 A Could you scroll it, please, one page forward.

2 MR. INGERMAN: Please, Shawn, scroll it one page
3 forward.

4 THE WITNESS: Could I explain something small, if I
5 may?

6 Q You'll have an opportunity to explain when your lawyer
7 asks the questions. Let me ask you a couple questions,
8 please. Thank you. On page -- page 11 of the translation of
9 Mr. Nashash's sentencing, the Israeli court says --

10 MR. INGERMAN: Your Honor, I would like to show this
11 to the jury, please.

12 Q It says the defendant, which is Mr. Nashash, was
13 convicted of the crime of membership in an unlawful
14 association, and that since the end of March, 2003, and
15 through the time of his arrest, he was a member of the al-Aqsa
16 Martyrs Brigade.

17 Do you see that, sir?

18 A I see that.

19 Q And you understand, do you not, that Muhammad Nashash,
20 who was involved in the Bus 19 bombing, January 24th, 2004, is
21 a member of the al-Aqsa Martyrs Brigade from Fatah and not
22 Hamas. You understand that, don't you?

23 A From this document, I do understand that.

24 MR. INGERMAN: Let's go back to slide 51, Shawn, if
25 we can.

Shaked - Cross- Ingerman

1288

1 Q You have, on the slide that you demonstrated to the jury,
2 Muhammad Nashash as a Hamas operative; is that right?

3 A That's correct.

4 Q And he was convicted by the Israeli courts of being a
5 member of the al-Aqsa Martyrs Brigade, correct?

6 A As I saw in the conviction, that is, indeed, correct.

7 Q So there's a mistake in your slide, right?

8 A May I explain?

9 Q Was Mr. Nashash convicted of being a member of the
10 al-Aqsa Martyrs Brigade?

11 A Yes. According to the conviction papers, yes.

12 Q Okay. Now, when Muhammad came to Nufal, in connection
13 with this attack, Muhammad told Nufal, that he, Muhammad, had
14 a friend called Jaara, who wanted to commit a suicide bombing;
15 is that right?

16 A Yes, that's correct.

17 Q And Jaara came to Muhammad, who is al-Aqsa Martyrs
18 Brigade, right?

19 A I'm not familiar with whether he came to him as a member
20 of Allah or some other organization; he came to him because he
21 wanted to carry out a suicide bombing.

22 Q When Jaara came to Muhammad, Jaara was not affiliated
23 with any organization; is that right?

24 A Jaara was not affiliated with any organization; he simply
25 wanted to commit suicide.

Shaked - Cross- Ingerman

1289

1 Q So he came to his friend Muhammad, and Muhammad was a
2 part of the al-Aqsa Martyrs Brigade, right?

3 A According to that description, that's apparently how it
4 occurred.

5 Q Okay. So I'm going to write on your slide AAMB, for
6 al-Aqsa Martyrs Brigade, over Mr. Nashash. Now, it is
7 Muhammad --

8 A You can write that.

9 Q Thank you. It is Muhammad who then introduces Jaara to
10 Nufal, correct?

11 A Yes, indeed.

12 Q And the money to buy the weapons, the explosive device
13 that they were going to use, came from Muhammad; isn't that
14 true?

15 A Also from Muhammad.

16 Q Now, then what happened was Muhammad and Nufal hung a
17 Hamas banner in Nufal's room; isn't that right?

18 A I don't know if one of them hung it up, two of them hung
19 it up. I'm familiar with the picture of the banner in their
20 house.

21 MR. INGERMAN: Okay. Let's pull up PX4045, Shawn,
22 if you could. And I think it's page 10 translation. 4045 is
23 the sentencing. I'm sorry. I meant the confession. 1035.
24 Defense Exhibit 1039. And page 12, please.

25 Q So this is Nufal's confession. That's in evidence.

Shaked - Cross- Ingerman

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1 MR. INGERMAN: And I would like to show that to the
2 jury, your Honor, please.

3 Q And what Nufal says is we hung a Hamas banner in my room,
4 and I gave Ali Jaara the charge to hold. Do you see that?

5 A Yes, I see it.

6 Q Okay. And then it says Muhammad and I also prepared an
7 explosive belt, with nothing but wires and pipe bombs, right?

8 A Yes.

9 Q And then Nufal says we filmed Jaara with the explosive
10 belt, the charge and a black toy plastic pistol. Do you see
11 that?

12 A Yes.

13 Q And that's the film that you say you saw, right?

14 A I'm familiar with that picture.

15 Q Okay. And the picture that is actually on the Hamas
16 claim of responsibility is taken at the time that Nufal and
17 Muhammad put a Hamas flag up in front of Jaara before
18 anything -- any attackers?

19 THE INTERPRETER: In front of Jaara?

20 MR. INGERMAN: Behind Jaara. I'm sorry.

21 THE WITNESS: Yes.

22 Q Now, you don't have any idea, do you, Mr. Shaked, how
23 many hours or days that Jaara spent with Nufal, do you?

24 A I can assume that he spent at least a few hours.

25 Q But you don't know, do you?

Shaked - Cross- Ingerman

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1 A No.

2 Q Okay. And then what it says is, however, a few days went
3 by, and we did not send him because I, Nufal, did not know
4 exactly how to perform a suicide attack. That's what Nufal
5 said in his confession, right?

6 A Indeed, this is what it said here, yes.

7 Q And what happens next is really important, Mr. Shaked,
8 because what happens next is Jaara goes and talks to Tanseem
9 Fatah. Do you see that?

10 A Yes, but some time elapsed between the time they were
11 together and until he went to the Tanseem. A few days had
12 past. Certain actions were taken. There were preparation.
13 He didn't go straight from one place to the other. In the
14 meanwhile, he did try to do something, to carry out something,
15 and only there did he go to speak with the Tanseem.

16 Q Tanseem Fatah is al-Aqsa Martyrs Brigade right?

17 A That's right.

18 Q The same group that his friend Muhammed Nashash belonged
19 to, right?

20 A Yes.

21 Q Now, it goes on to say Jaara told me he spoke to Fatah,
22 and that they, Fatah, will send him to a suicide attack. Do
23 you see that?

24 A I see this in this testimony, but we need to remember
25 exactly the chronology of this confession. It doesn't mention

Shaked - Cross- Ingerman

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1 any days or anything, but rather this is a story, a narrative,
2 a narrative provided by my fall, and under this context, he
3 wanted to kind of make it easier for himself to try to get a
4 lesser punishment as possible. This is why it was easy for
5 him to explain it this way, but we need to remember the
6 reality as it occurred. So, indeed, there was the issue that
7 he did want to carry out this attack, and only after that
8 attempt had failed, only then he approached Fatah in order to
9 try to do it another time in a different way.

10 Q And he approached Fatah, the al-Aqsa Martyrs Brigade, to
11 do a different attack in a different way, right?

12 A He wanted to do it in the same way, through a suicide
13 bombing, as it was customary in those days, to board a bus and
14 then explode yourself.

15 Q We can agree, though, that when Jaara went out the first
16 time to commit his attack, Bus 19 was not his target, was it?

17 A Bus Number 19 wasn't the defined target, not in the first
18 time and not at the second time.

19 Q Okay. So Bus 19 is not the target the first time around,
20 when Jaara thinks about committing a suicide attack, but the
21 second time around he's successful, correct?

22 A Yes, he did manage to board the first bus, which stopped
23 at the station, which he managed to reach, the bus stop. But
24 it happened to be Bus Number 19. It could have been just the
25 same as number nine or bus number seven.

Shaked - Cross- Ingerman

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1 Q But it wasn't, it was Bus Number 19, right.

2 A Yes. Regretfully, he did manage to board Bus Number 19,
3 which was packed with passengers.

4 Q Now, let's see if there are a couple things we can agree
5 on, focussing on the attack that Jaara actually carried out on
6 Bus 19. Can we agree that the al-Aqsa Martyrs Brigade
7 operatives are the ones who actually constructed the explosive
8 device that Jaara used to blow up Bus 19?

9 A Yes, we do agree on that.

10 Q Okay. And we also agree that whatever explosive device
11 Nufal, from Hamas, and Muhammad made for him for the first
12 attack that didn't occur was not the explosive device that was
13 used on Bus 19?

14 A That's right.

15 Q And it was an al-Aqsa Martyrs Brigade member who drove
16 Jaara to the site of the bombing, right?

17 A That is, indeed, true.

18 Q Okay. Now, I want to talk a little bit about the video
19 picture that was taken of Jaara with the Hamas flag behind it.
20 Can we agree that -- actually, it says it in here, in the
21 confession, in Plaintiffs' exhibit -- Defense Exhibit 1039 --
22 if we can high light that Shawn.

23 It says I gave the pictures of Jaara -- this is
24 Nufal talking. I gave the pictures of Jaara with the charges,
25 the pistol, and the Hamas banners to the Bethlehem television

Shaked - Cross- Ingerman

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1 station, and they reported that Hamas claimed responsibility
2 for the suicide attack.

3 Do you see that?

4 A Yes, I can see that.

5 Q And then after Nufal gave the video to the Bethlehem
6 television station, claiming that Hamas had perpetrated the
7 attack on Bus 19, Fatah then says, but, actually, Fatah was
8 responsible for the attack in Nala (phonetic); isn't that what
9 he says?

10 A Indeed, this is what he says in this document.

11 Q Okay. Now, after this horrible attack on Bus 19, there
12 are actually four al-Aqsa Martyrs Brigade members that are
13 convicted for this attack; isn't that true?

14 A Yes.

15 Q Let me show you --

16 MR. INGERMAN: Just the witness, slide six, Shawn.

17 Q Now, slide six identifies the four al-Aqsa Martyrs
18 Brigade members that were convicted in the Bus 19 attack;
19 isn't that right?

20 A Is it right. I'm not -- I'm not saying otherwise, and I
21 did not say the al-Aqsa Martyrs Brigade had no responsibility
22 over this attack.

23 Q Let me try my question again. Maybe it got lost in
24 translation. Are -- these four folks listed on the left-hand
25 side, are they all al-Aqsa Martyrs Brigades operative

Shaked - Cross- Ingerman

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1 convicted in connection with the Bus 19 attack?

2 A Yes, they were convicted.

3 MR. INGERMAN: Your Honor, permission to show this
4 to the jury. I've shown it to Mr. Turner.

5 MR. TURNER: No objection.

6 THE COURT: That's fine.

7 Q Now, we've already talked about Muhammad Nashash, Abde
8 Madah (phonetic) was an al-Aqsa Martyrs Brigade operative who
9 was convicted for preparing the explosive device used on the
10 Bus 19 bombing, right?

11 A Indeed so.

12 THE COURT: Mr. Ingerman, do you have a lot more on
13 this line, about this attack, I mean?

14 MR. INGERMAN: No, I think I'm pretty close to being
15 finished.

16 THE COURT: Okay. Then go ahead.

17 Q Now, you also mentioned in connection with Bus 19 that
18 you had viewed Jaara's will, correct?

19 A Yes.

20 MR. INGERMAN: If we may show the witness only
21 Defense Exhibit 1042.

22 Q Do you recognize this to be Jaara's will that you viewed
23 in connection with your work in this case?

24 A Yes, he reads a few words in Arabic and says this is
25 indeed the will.

Shaked - Cross- Ingerman

1296

1 Q Okay. And at the bottom of the will, Jaara says, does he
2 not, that he's part of the al-Aqsa Martyrs troops?

3 A Okay. Simply need to read this paragraph, and it's
4 handwritten, and the focus of these slides is not very good.

5 Q Please, if it's easier, I can put the certified English
6 translation up for you.

7 A If it's bigger, if it's easier to read, then of course.

8 MR. INGERMAN: Sure. Shawn, can we do that, please?
9 And if we can blow that up for Mr. Shaked so he can read it
10 more clearly.

11 Q How's that?

12 A Now, I can read it. Thank you. This is the will
13 prepared by the al-Aqsa Martyrs Brigade before Jaara went out
14 to perpetrate the attack on Bus Number 19.

15 Q And it says that Jaara is part of the al-Aqsa Martyrs
16 Brigade, correct?

17 A This will does say that Jaara is a member of the al-Aqsa
18 Martyrs Brigade.

19 MR. INGERMAN: Your Honor, I move in Defense
20 Exhibit 1042.

21 MR. TURNER: No objection.

22 THE COURT: It is received.

23 (Defense Exhibit 1042 was received in evidence.)

24 Q Just to wrap this up, I hope, Mr. Shaked, am I right that
25 in your expert report that you wrote, you claimed Fatah

Shaked - Cross- Ingerman

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1 eventually made a clear withdrawal from responsibility for the
2 Bus 19 bombing and denied any responsibility for it? Didn't
3 you say that in your report?

4 A Indeed, following the very fierce debate between Fatah
5 and Hamas regarding the responsibility, indeed Fatah
6 ultimately did withdraw their responsibility for the attack.
7 Hamas demanded of Fatah to cancel and withdraw their claim of
8 responsibility. Therefore, within the year after the attack,
9 Fatah, under pressure from Hamas, did withdraw its
10 responsibility for the attack. I did not say that the al-Aqsa
11 Martyrs Brigade do not have responsibility for the attack;
12 they bear responsibility just as Hamas does. Both of them are
13 responsible for this attack, and this is what I was trying to
14 explain. I was not trying to avoid the fact that al-Aqsa
15 Martyrs Brigade also bore responsibility for the perpetration
16 of this attack.

17 I'd like to add one last word. We need to remember
18 that the suicide bomber, in this case it was Ali Jaara, is not
19 an educated person. He's not a special person. All he is, is
20 a pawn in the hands of the organizations. That's what he is.
21 His position, his role, is merely to push the button. He is
22 just a simple pawn in their hands.

23 MR. INGERMAN: Your Honor, I move to strike.

24 THE COURT: Hang on one second. I'll grant the
25 motion and strike that last statement. Plaintiffs' counsel

Shaked - Cross- Ingerman

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1 can inquire on redirect if they want.

2 Are you done in this area?

3 MR. INGERMAN: Almost.

4 THE COURT: You said that before. Let me see
5 counsel at sidebar.

6 (Sidebar outside the presence of the jury.)

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Sidebar

1299

1 (Sidebar)

2 THE COURT: Mr. Ingerman, that was really
3 inefficient. All right? Remember the witness' story that he
4 started out with on direct was that this was what he called a
5 joint operation? There was no controversy that Fatah al-Aqsa
6 Martyrs Brigade wasn't the ones who actually triggered the
7 explosion. He said that, and you spent the last 25 minutes
8 getting him to say that again. You achieved one thing, which
9 was to get him to move one of the people on his chart into
10 al-Aqsa Martyrs Brigade, and that's fine. But, you know, this
11 could have been done in three questions.

12 The questions you have that said we agree that
13 al-Aqsa Martyrs Brigade supplied the belt, they put him up to
14 it, you could have done that in literally three minutes. I'm
15 going to ask you to move on and go to something else, because
16 I think the jury understands what's happened, and you've
17 scored all the points you can on cross in this area.

18 MR. INGERMAN: Your Honor, he specifically testified
19 it was not a joint operation.

20 THE COURT: No, he said it was not a shared
21 operation, he said it was a joint operation. I listened to
22 that very carefully. There is no contradiction between what
23 was brought out in the last 25 minutes and what the witness
24 said on direct, other than the one member that he attributed
25 to one fax being moved to the other fax, so, please, let's not

Sidebar

1300

1 beat a horse to death.

2 MR. INGERMAN: I disagree, your Honor, but I have
3 one more exhibit that I think is important to show the
4 witness, and then I will move on.

5 THE COURT: Okay. But, then, please don't do this
6 again with any other areas. Okay? This was just really a
7 large amount of time that could have been done -- it's an
8 important point. I'm not saying you shouldn't have done it,
9 but could have been done in a lot more efficient way. Please
10 try to do that in the future.

11 (Sidebar concluded.)

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Shaked - Cross - Ingerman

1301

1 (In the presence of the jury.)

2 MR. INGERMAN: May I proceed, your Honor?

3 THE COURT: You may.

4 Q The last thing on this attack, Bus 19, Mr. Shaked, I want
5 to ask you about, because Mr. Turner asked you on direct
6 whether or not there was an Israeli Security Agency statement
7 about Bus 19, but we didn't show it. And since he had showed
8 you a number of Israeli Security Agency reports in connection
9 with some of the other attacks, I wanted to show to you the
10 one from the very same exhibit that the Plaintiffs were to
11 show you.

12 MR. INGERMAN: Shawn -- and if this is the Israeli
13 Security Agency report just for -- it's in evidence.

14 So, your Honor, may I show it to the jury?

15 THE COURT: You may.

16 Q This is the Israeli Security Agency report Mr. Turner
17 showed you over and over again, in connection with some of the
18 other attacks. And I was curious that you didn't mention this
19 or wasn't shown to the jury on direct, because there is an
20 excerpt in here for the Bus 19 bombing; you knew that, right?

21 A I was not trying to evade stating that fact, that the 19
22 bus bombing was carried out by the al-Aqsa Martyrs Brigade,
23 but -- and I say again a very big but -- it was just a hair's
24 breath away from Hamas actually having carried it out.

25 Therefore, the responsibility for the bombing is shared, it's

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1 joint, for both organizations. I tried to explain that in my
2 expert opinion. And without evading any responsibility,
3 al-Aqsa Martyrs Brigade ultimately was the one to carry out
4 that attack.

5 Q Mr. Shaked, the Israeli Security Agency says it was the
6 al-Aqsa Martyrs Brigade, and there's no mention of Hamas
7 anywhere in there, is it?

8 A I mentioned earlier in my testimony that I do not base
9 myself only on one report or a single fact. I look at the
10 continuum of the entire picture that is created, and in this
11 case I had to mention subject of Hamas. Moreover, the Israeli
12 court that judge these people from Hamas, they also discuss
13 this matter, and they stated that Hamas also had
14 responsibility for this attack. They said that it was Hamas
15 that actually loaded the bullet into the barrel of the gun and
16 that the trigger was pulled by a member of al-Aqsa Martyr
17 Brigade. There's no evasion. I'm stating the truth here;
18 al-Aqsa Martyrs Brigade carried out this attack, but Hamas
19 also bears responsibility for this attack.

20 MR. INGERMAN: Your Honor, I move to strike.

21 THE COURT: No, I'm going to overrule the objection
22 and direct you to move on to something else.

23 Q Now, let's talk about the Bus Number 2 bombing for a
24 moment. Now, you were aware, were you not, Mr. Shaked, that
25 Reuters -- by the way, Bus Number 2 bombing occurred on

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1 August 19, 2003, right?

2 A That is correct.

3 Q Do you know that Reuters is a news agency that puts out
4 news reports?

5 A Of course.

6 Q And the day after the Bus Number 2 bombing, you knew, did
7 you not, that Reuters reported that Islamist Jihad from the
8 al-Aqsa Brigade had claimed responsibility for the Bus Number
9 2 bombing?

10 A That is correct.

11 Q And you also knew that on August 20th, the Israeli
12 newspaper, Harres (phonetic), reported that Islamist Jihad had
13 claimed responsibility for this attack, Bus Number 2, right?

14 A Yes, indeed, that's what it said.

15 Q And you also knew, did you not, that Rantiqui, one of the
16 Hamas leaders, denied that Hamas was responsible for or
17 involved in any way with Bus Number 2 bomb; is that right?

18 A Yes.

19 Q And you also know, do you not, that the Guardian, an
20 English newspaper, also reported that Islamist Jihad claimed
21 responsibility for this attack?

22 A Yes, and I'm very happy that the distinguished attorney
23 has presented all this material, all these things that were
24 made public or published one day, perhaps two, at most, after
25 the attack, after the attack on Bus Number 2. Because this

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1 was a very, very sensitive time for Hamas. There was a cease
2 fire at the time between Israel and Hamas, which Hamas had
3 broken, and so it didn't want to take -- it didn't want to
4 make official claim of responsibility, and it was happy to let
5 Islamic Jihad take responsibility, because it cleared Hamas of
6 responsibility. And Islamist Jihad, perhaps, took advantage
7 of the fact, because it was not part of the cease fire at that
8 time, and I don't deny those facts.

9 As I said, my test of the reality is not one day or
10 one hour after the attack, but rather through a perspective of
11 time. And as it turned out, Rael Al Misk, the one whose will
12 I saw, and I personally visited in his home and spoke to his
13 wife, he was the one who carried out the terror attack and not
14 the Islamist Jihad or any of the other organizations that may
15 have claimed responsibility a day or two after it was carried
16 out.

17 Q I understand that's your opinion, but I'm asking you a
18 very simple question. Do you know -- you know, don't you,
19 that also on August 20th, 2003, the New York Daily News, here
20 in New York, also reported that the Islamist Jihad had claimed
21 responsibility, don't you?

22 A I believe the distinguished attorney that that is what
23 was, indeed, reported in the newspaper the next day. But if
24 we look at the difference in time between -- in the hours
25 between the time zones, between United States and Israel,

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1 we'll see that that is, in fact, just a few hours after the
2 attack was carried out. That's when it was reported, so they
3 didn't yet have any perspective in time to see what the real
4 situation was.

5 Q Okay. Let --

6 A Only afterwards was it discovered who actually carried it
7 out.

8 THE COURT: Let me say this, I'm going to ask the
9 witness to confine himself a little more closely to the
10 question being asked of him. I know he has more to say about
11 a lot of the questions, but it's up to the Plaintiffs' lawyers
12 to bring out that information when they examine him again.

13 THE WITNESS: Thank you very much, your Honor. I'll
14 do that.

15 THE COURT: Okay.

16 MR. INGERMAN: Thank you.

17 THE COURT: Next question.

18 Q Now, with respect to the Dolphinarium attack that
19 occurred on June 1st, 2001, we agree that Hamas did not claim
20 responsibility until three days after that attack, right?

21 A I'll accept what you say. I don't recall if it was
22 exactly a day or two, but I accept that that's indeed the
23 situation.

24 Q When you had your sworn testimony taken at your
25 deposition, you did not, at that time, remember whether there

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1 were any other claims of responsibility for the Dolphinarium;
2 isn't that right?

3 A I'll try to keep my answer brief, as the judge instructed
4 me. In my expert opinion, I did not relate to every single
5 claim of responsibility, especially those I did not consider
6 significant, or which were incorrect, or were no more than
7 boasting and self-glorification. In some cases, I did relate
8 to those claims of responsibility, when I thought they were
9 significant.

10 Q Sir, that's not my question. My question is, during your
11 deposition, your sworn statement that -- your sworn testimony
12 you gave in this case, isn't it true that you said, at that
13 time, you were not aware of any competing claims for the
14 Dolphinarium attack?

15 A That is, indeed, correct.

16 Q And you know now, don't you, that there were alternative
17 claims of responsibility for the Dolphinarium attack.

18 A Yes, I do indeed know that, and I hear it from you as
19 well.

20 Q On June 1st, the day of the attack, you were aware, are
21 you not, that CNN reported that Islamist Jihad claimed
22 responsibility for the Dolphinarium attack?

23 A Yes, I know that.

24 Q And on that same day, the Israeli Ministry of Foreign
25 Affairs also reported that the Palestinian Hezbollah claimed

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1 responsibility for the attack, right?

2 A Yes, the Ministry of Foreign Affairs reported just a few
3 hours after the attack Hezbollah had taken responsibility for
4 the attack.

5 Q On the next day, June 2nd, 2001, the British
6 Broadcasting -- the BBC, the British Broadcasting Company,
7 reported also that Islamist Jihad claimed responsibility,
8 correct?

9 A That's correct.

10 Q And on June 3rd, two days later, the Jerusalem Post --
11 I'm sorry. Strike that.

12 Now, are you also aware, Mr. Shaked, that Fatah
13 actually sent money to the bomber's family?

14 A Yes, I know that.

15 Q Okay. And are you aware, sir, that as recently as June
16 of this year, the Jerusalem Post reported that the Islamist
17 Jihad claimed responsibility for the attack?

18 A Wow, I didn't know that.

19 Q Okay. So we have four different claims with respect to
20 the Dolphinarium bombing, right?

21 A What can you do? Reporters sometimes get it wrong, too.

22 Q And you're a reporter, right?

23 A I've also made mistakes in my life as a journalist.

24 Q Haven't we all? So let's talk about the Sbarro bombing
25 for a moment. That happened on August 9th, 2001, in

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1 Jerusalem, right?

2 A Yes.

3 Q And you're aware that on that same day the Israeli
4 Ministry of Foreign Affairs reported that Islamist Jihad
5 claimed responsibility for the attack, right?

6 A Yes, I'm aware of the fact that two hours after the
7 attack occurred the MFA rushed to say that.

8 Q And also on August 9th, 2001, the British newspaper the
9 Guardian also reported that Islamist Jihad claimed
10 responsibility for the Sbarro bombing, right?

11 A I do know that.

12 Q And you also know that on August 9th, 2001, our New York
13 Daily News, here in New York, also reported that the Islamist
14 Jihad claimed responsibility for the Sbarro bombing?

15 A Yes.

16 Q And you also know that the British newspaper the
17 Telegraph also reported, on August 9th, 2001, that the
18 Islamist Jihad had claimed responsibility for the Sbarro
19 bombing?

20 A Yes.

21 Q And on the next day, August 10th, 2001, the Denver Post
22 reported that Islamist Jihad claimed responsibility, correct?

23 A Yes.

24 Q And about six months later, on March 22nd, 2002, there
25 was a Daily News report that reported that the al-Aqsa Martyrs

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1 Brigade of Fatah took credit for the attack for the Sbarro
2 bombing; isn't that right?

3 A Regretfully, the Daily News did not follow after the
4 occurrences in Israel, and did not follow up the investigation
5 regarding the Sbarro attack and also regarding the
6 responsibility. As for the other newspapers, these were
7 claims that were published three or four hours after the
8 attack occurred that were provided by various anonymous phone
9 calls. This is what had happened. And the truth is that the
10 official claim by the Hamas was actually issued a few hours
11 later after the attack, on that very same evening.

12 Q The Daily News report -- I'm sorry.

13 A And by the time the report appeared six months later, the
14 people had been arrested, the members of the cell, and it was
15 pretty clear who perpetrated this attack. It was hardly
16 necessary to have any further investigations, and I am sorry
17 for mistakes made by my fellow journalists.

18 Q Now, let's talk about the December 1, 2001, Ben Yehuda
19 bombing. Now this involved two suicide bombers, and one car
20 explosion, as you've testified, right?

21 A Right.

22 Q Now, I want to focus on the car bombing for a minute. We
23 agreed, do we not, that the car bomb that exploded belonged to
24 an operative of Islamist Jihad?

25 A Indeed, that's true.

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1 Q And, interestingly, when you were asked in your
2 deposition, your sworn testimony about this, about the owner
3 of the car, you said that there's not a person in the
4 Palestinian streets that is not recognized with an
5 organization. Do you remember saying that?

6 A I did say that, and I do not retract from that.

7 Q What organizations are you talking about?

8 A I'm talking about all organizations, the ones that are
9 members of the PLO, and the ones that are not members of the
10 PLO. And if you would like me to, I can list the names of all
11 these organizations, and I am referring to the Palestinian
12 organizations.

13 Q Is it your opinion, Mr. Shaked, that all Palestinians in
14 the streets are members of some sort of terrorist
15 organization?

16 A I'm not saying that all these organizations are terrorist
17 organizations. I clearly said that these were Palestinian
18 organizations.

19 Q The Palestinian territories are occupied territories by
20 the Israeli military, are they not?

21 A Yes, that's right.

22 Q And based on -- I think you testified on direct that
23 based on your work, you've been able to understand the
24 Palestinian society. Is it your understanding that the
25 Palestinians consider the Israeli army an enemy?

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1 MR. TURNER: Your Honor, I object to this on the
2 basis of relevance.

3 THE COURT: Sustained.

4 MR. INGERMAN: May we have a brief sidebar,
5 your Honor?

6 THE COURT: Sure.

7 (Sidebar heard outside the presence of the jury.)
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Sidebar

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1 (Sidebar)

2 MR. INGERMAN: Your Honor, we've had lots of
3 testimony and argument about the bank's annual reports,
4 talking about the occupied enemy, and I think he's testified
5 on direct that he understands -- understood the Palestinian
6 society as part of his work, and I think I'm entitled to
7 inquire into that.

8 THE COURT: You have him say that, in fact, certain
9 regions are occupied territories. That ties it into the
10 report. The rest of it runs an undue risk of having us try
11 the Israeli Palestinian conflict, and I'm, therefore,
12 excluding the question and this line of inquiry on Rule 403.

13 (Sidebar concluded.)

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1 (In the presence of the jury.)

2 Q Mr. Shaked --

3 MR. INGERMAN: May I proceed, your Honor?

4 THE COURT: You may.

5 Q The occupiers of the Palestinian territories are the
6 Israeli Army, right?

7 MR. TURNER: Your Honor, again, I object.

8 MR. INGERMAN: That's my last question.

9 THE COURT: I'll allow that one question.

10 THE WITNESS: That's correct.

11 Q Now, we were talking about the December 1st, 2001,
12 Ben Yehuda attack, and we had already established that the
13 owner of the car bomb was Islamist Jihad. You're aware, are
14 you not, Mr. Shaked, on December 2nd, 2001, the day after the
15 attack, the British Broadcasting Company reported a claim by
16 Islamist Jihad for Ben Yehuda?

17 A Yes, I did know that.

18 Q And you also knew that our New York Daily News reported,
19 on December 2nd, 2001, also that Islamist Jihad had claimed
20 responsibility for the Ben Yehuda attack?

21 A Yes.

22 Q Now, I want to move to the September 19, 2002, Bus Number
23 4 attack, and I think you mentioned this on direct,
24 Mr. Shaked, but Hamas' claim of responsibility for the Bus
25 Number 4 attack came six years later; isn't that true?

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1 A Indeed, that's true.

2 Q And at your deposition, when your sworn testimony was
3 taken, you couldn't remember any other claims of
4 responsibility for the Bus Number 4 attack; isn't that right?

5 A Could be. I'm also a human being.

6 Q But you know now, do you not, sir, that the next day,
7 September 20th, 2002, CNN reported that Islamist Jihad had
8 claimed responsibility for Bus Number 3?

9 A That's indeed true.

10 Q Reuters, the news organization, reported the same thing,
11 right?

12 A Yes.

13 Q Now, are you aware of a publication called the Friends of
14 the Israel Gospel Ministry?

15 A I've learned about it because of the attack.

16 Q Okay. And they, too, reported, did they not, on
17 September 19th, 2002, that although Hamas had first claimed
18 responsibility, the Islamist Jihad later claimed
19 responsibility for the Bus 4 attack?

20 A Yes.

21 Q Now, let's move to the Mike's Place attack, if we could.
22 And that occurred on April 30th, 2003. Am I correct with
23 respect to Mike's Place that Hamas did not take responsibility
24 for the attack until March of 2004, almost a year later?

25 A That's right.

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1 Q And I think you said this on direct, but you agree with
2 me that the attack that occurred at Mike's Place was totally
3 different than the other 23 attacks that we're here about in
4 this trial?

5 A I do agree.

6 Q And the two attackers in the Mike's Place attack were
7 British citizens who had trained with Al-Qaeda, right?

8 A Yes, they were British citizens, trained by Al-Qaeda.

9 Q And after the Mike's Place attack, Israeli Prime
10 Minister's Office announced that Hamas decided not to take
11 responsibility for this attack; isn't that right?

12 A That's right.

13 Q And later that day, CNN reported that the al-Aqsa Martyrs
14 Brigade, the Fatah group, had claimed responsibility for
15 Mike's Place, right?

16 A That's right.

17 Q And on April 30th, 2003, the United States Government
18 agency International Institute for Counterterrorism indicated
19 Fatah had claimed responsibility for Mike's Place. You knew
20 that, right?

21 A That's right.

22 Q And you also know that on the day of the attack, the
23 Israeli Ministry of Foreign Affairs also said that al-Aqsa
24 Martyrs Brigades had claimed responsibility for the attack?

25 A Indeed so, and the list is long, and the distinguished

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1 lawyer can also add my name to this list, because I had also
2 made a mistake, and I also reported and it was a mistaken
3 report back then, regarding the attack at Mike's Place. And
4 there were various conjectures and theories regarding Al-Qaeda
5 or Hezbollah and their involvement.

6 Q Am I the distinguished lawyer?

7 THE COURT: You are.

8 MR. INGERMAN: Thank you, your Honor.

9 THE WITNESS: Yes, indeed, you are a distinguished
10 lawyer.

11 THE COURT: Don't tell us that's the first time
12 everyone's said that.

13 MR. INGERMAN: Am I under oath?

14 Q Now, Mr. Shaked, we can also agree that the Washington
15 Post and Time Magazine also reported that Fatah and Hezbollah
16 claimed responsibility for these attacks on April 30th, 2003,
17 the Mike's Place?

18 A Yes.

19 Q Now, I want to show you again, with respect to Mike's
20 Place, the slide that Mr. Turner showed you regarding the ISA
21 report for the Mike's Place attack. And it was --

22 MR. TURNER: 3811.

23 MR. INGERMAN: The slide number? Slide four.

24 MR. TURNER: I thought you were talking about the
25 exhibit.

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1 MR. INGERMAN: The slide to use. Thank you.

2 May I show that to the jury, your Honor?

3 THE COURT: Yes.

4 Q Now, this is the excerpt from the ISA report that you
5 showed to the jury from Mike's Place, and I was interested to
6 see two things. At the bottom -- first of all, in the middle,
7 it says is the Hamas organization claimed responsibility for
8 the attack, right?

9 A Indeed it does say so.

10 Q And then at the end of the report, it says the terrorist
11 pair was assisted by a number of foreign left-wing operatives
12 staying in the area. Do you see that?

13 A I would like to explain regarding British citizens who
14 enter Israel through the Allen Bee (phonetic) Bridge, who
15 cross into the territories through Jordan, and they are
16 considered suspect. And usually along with them there are
17 various NGOs, and left-wing organizations which operate within
18 the territories in order to receive coverage. And it is no
19 secret that these left-wing organizations don't really like
20 Israel. So for these two British citizens, it was quite
21 natural for them to receive help from other organizations,
22 such help as driving them or finding a place for them to stay.
23 But I don't think that these activists really knew what their
24 intention was, that it was to carry out a suicide bomb.

25 Q Who were the foreign left-wing operatives that helped the

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1 two terrorists from Mike's Place?

2 A If I recall correctly, their name -- the name of the
3 organization is ISA. It is called International Solidarity
4 something, and this organization is active both in Gaza and
5 the West Bank. And these two British people received
6 assistance from them mainly in Gaza.

7 Q Now, the last thing I want to look at, with respect to
8 Mike's Place, Mr. Shaked, is the official -- what you claim to
9 be the official claim of responsibility by Hamas.

10 MR. INGERMAN: And Mr. Turner didn't put it up on
11 the screen. I believe it is in evidence -- just to make sure
12 on the right, Shawn, let's show just the witness PX3807, the
13 official claim of responsibility is that PX10 --

14 MR. TURNER: For Mike's Place, it's 3807.

15 MR. INGERMAN: 3807. Thank you. That's in
16 evidence, your Honor. May I show it to the jury?

17 THE COURT: You may, but you probably want the
18 English.

19 MR. INGERMAN: Arabic's not going to help me.

20 THE COURT: More importantly, it's not going to help
21 the jury.

22 Q So we go to the English part. The second paragraph,
23 Mr. Shaked, says, as the martyr Izz al-Din al-Qassam Brigade's
24 claimed joint responsibility with the al-Aqsa Martyrs
25 Brigades. Do you see that, Mr. Shaked?

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1 A Yes, I do.

2 Q You did not tell the jury you believed this to be a joint
3 claim of responsibility with al-Aqsa Martyrs Brigade, did you?

4 A I suggest we look at the date of the claim of
5 responsibility by Hamas to understand why Hamas published
6 their claim of responsibility at that particular time,
7 together with the al-Aqsa Martyrs Brigade.

8 Q So is it your testimony that Hamas is not telling the
9 truth in this official communication, when it says that
10 there's a joint claim of responsibility with al-Aqsa Martyrs
11 Brigade?

12 A I'm testifying that it is true Hamas wrote it to kind of
13 dispel the clarity, the fog, as it were, and pressure being
14 excerpted on Hamas. They were in a very great state of
15 confusion after the terror attack, after a suicide bombing was
16 carried out by foreigners who were affiliated with Al-Qaeda,
17 and there was a great deal of anger at that time. And somehow
18 to dispel the confusion, that is what they tried to do. And
19 when I look at it with the perspective of time, and I look at
20 the fact that in March, afterwards, they published a full and
21 precise claim of responsibility, including the will by the two
22 suicide bombers and a very detailed report by Hamas, which was
23 reported by the whole world, including the BBC.

24 Q You said including the BBC?

25 A The BBC made a long, detailed documentary film about the

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1 two suicide bombers and about the bombing at Mike's Place.

2 Q Let's talk about the September 4th --

3 THE COURT: Before you go on, let's take our
4 afternoon break.

5 MR. INGERMAN: Sure.

6 THE COURT: Ladies and gentlemen, we'll come back in
7 15 minutes. See you at 3:30. Remember, don't talk about the
8 case. See you soon.

9 (Outside the presence of the jury.)

10 THE COURT: How are you doing time wise.

11 MR. INGERMAN: Pretty good.

12 THE COURT: Can you be more specific? Not totally
13 specific. Just a little more.

14 MR. INGERMAN: Part of it depends on whether he says
15 yes, and then he says yes and 27 more sentences.

16 THE COURT: Yes, I do appreciate that. I'm trying
17 to help you there.

18 THE WITNESS: I'll try.

19 MR. INGERMAN: I appreciate that, too. If we come
20 back at 3:30, I'm hoping 4:00 o'clock, 4:15 at the latest.

21 THE COURT: Okay. Good. See you then.

22 (Recess in proceedings.)

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1 THE COURT: Please bring in the jury.

2 (Jurors enter the courtroom.)

3 THE COURT: Be seated. Mr. Ingerman, you may
4 continue.

5 MR. INGERMAN: Thank you, your Honor.

6 BY MR. INGERMAN:

7 Q Mr. Shaked, I want to talk to you about the September
8 24th, 2004, Neve Dekalim attack. That was a mortar attack
9 on a neighborhood in the Gaza strip called Neve Dekalim?

10 A Yes.

11 Q And the attackers in that case escaped and were never
12 identified, right?

13 A That's indeed right.

14 Q And on the day of the attack, ABC News reported that
15 Islamic Jihad took responsibility for the attack; isn't that
16 right?

17 A Yes.

18 Q And the only thing that you cite for your opinion that
19 it was Hamas is the Hamas claim of responsibility on the Web
20 site, right?

21 A The claim of responsibility, as well as my professional
22 responsibility -- experience regarding everything that had
23 existed during that period with respect to mortars.

24 Q And what you said on your direct examination, because I
25 wrote it down here, was that Hamas is the only terrorist

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1 organization that was using mortars in Gaza at that time,
2 right?

3 A Yes. And I did add proper or standard mortars.

4 MR. INGERMAN: Okay. If we could put up for just
5 the witness, Sean, Defense Exhibit 1040.

6 BY MR. INGERMAN:

7 Q And Mr. Shaked, I'll represent to you that this is the
8 RAND report that we had looked at earlier that was
9 commissioned by the United States Department of Homeland
10 Security. And if we could look at page 42, Sean.

11 And this was a document that you said you had looked
12 at, Mr. Shaked. Isn't it true that the RAND Corporation
13 commissioned by the United States Department of Homeland
14 Security concluded that in September of '04, members of
15 al-Aqsa Martyrs Brigade fired two mortars on a settlement in
16 Gaza?

17 A September is a long month. I guess they probably fired
18 even more than that.

19 Q Al-Aqsa Martyrs Brigade, you're talking about?

20 A Yes, the al-Aqsa Martyrs Brigade. During that period,
21 many mortars were fired.

22 MR. INGERMAN: Okay. Now, we can take that down,
23 Sean. Thanks.

24 BY MR. INGERMAN:

25 Q Now, throughout your testimony, Mr. Shaked, you

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1 testified on a number of occasions in connection with a
2 number of attacks that part of your support for your opinion
3 are Israeli court documents, right?

4 A Indeed, that's right.

5 Q And you testified, did you not, that these court
6 documents are the ones that you find most reliable and most
7 significant?

8 A Let me repeat once again what I've already said at the
9 beginning of my testimony. I find all documents to be
10 important, but what's also very important is the
11 cross-referencing, the corroboration, the verification. And
12 that gives me the general picture. And this is the picture
13 which I provide.

14 I don't think that any one document is more important
15 than another one. This is not mathematics we're talking
16 about. I don't necessarily have a situation always -- I
17 don't necessarily have a situation that two plus two are
18 always four. I always need to weigh in what's more
19 important, what's less important.

20 Q Okay. So you do rely, though, on Israeli court
21 documents, right?

22 A Yes.

23 Q And in Israel, it's Israeli judges that determine who
24 is responsible ultimately for a particular attack; isn't
25 that right?

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1 A Yes. This is the judicial system.

2 Q And in the West Bank and Gaza, that role is fulfilled
3 by military judges in military courts; isn't that right?

4 A That is, indeed, true.

5 Q Now, you know, do you not, that Colonel Netanel Benishu
6 is the president of the military courts.

7 You know that name?

8 A During which period?

9 Q Today.

10 A I am not very much up to date at what's been going on
11 in the courts during this past year due to personal
12 circumstances.

13 Q Okay. Let's talk about during the 2000 and 2004 time
14 frame, okay?

15 You know, do you not, that there were claims that the
16 military prosecutions in the military courts don't meet the
17 legal requirements to provide Palestinian defendants with a
18 fair trial?

19 A I am no legal expert. And if, indeed, there is some
20 criticism, I cannot comment on it because I'm no expert on
21 various laws or their rules of prosecution in the
22 territories.

23 Q Did you know that the conviction rate in Israeli
24 military courts --

25 MR. TURNER: Your Honor, excuse me. I object to

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1 this on the basis of relevance.

2 THE COURT: Sustained.

3 MR. INGERMAN: Your Honor, may we have a sidebar?

4 THE COURT: Sure.

5 (Sidebar conference.)

6 (Continued on the next page.)

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SIDEBAR CONFERENCE

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1 MR. INGERMAN: Your Honor, plaintiffs have
2 introduced verdict and sentencings one after another, and
3 we're entitled to impeach the credibility of those through
4 this witness who relied on them.

5 THE COURT: Yes, but you don't have anything to
6 say that they're not reliable. You're asking him a
7 question, and he hasn't said the process is good. He said
8 he's relying on those.

9 Are you going to call an expert who is going to
10 say they are suspect?

11 MR. INGERMAN: No. But I can cite to a document
12 and see if he's seen it.

13 THE COURT: Is it a learned treatise?

14 MR. INGERMAN: One is a U.N. report. I mean, I
15 think I'm entitled to inquire what he looked at with respect
16 to the, you know --

17 THE COURT: You are. And you're even entitled to
18 make a case that what he looked at is not reliable. What
19 you're not entitled to do is introduce extraneous evidence
20 through this witness to show that what he looked at is not
21 reliable, evidence that he has not necessarily seen or
22 considered in forming his opinion. I think your point is
23 that he didn't consider if these courts are reliable or not.
24 That's an argument point.

25 If you want to introduce evidence in your case

SIDEBAR CONFERENCE

1327

1 that's properly listed to that effect, you can do that as
2 part of an expert coming up with a contrary opinion. But I
3 think it would be a complete sideshow to start grilling him
4 on the adequacy of the legal process in the foreign courts.
5 So I'm not going to allow that.

6 MR. TURNER: I just want to make sure for the
7 record that we don't go back and have a question framed in
8 such a way that interjects all of this into the process.

9 THE COURT: Well, that's what I'm saying. I don't
10 think there's a basis for the questioning, but I can't
11 prejudge any question until I hear it.

12 (End sidebar conference.)

13 (Continued on the next page.)
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SHAKED - CROSS - INGERMAN

1328

1 BY MR. INGERMAN:

2 Q Mr. Shaked, did you know that there was a United
3 Nations report --

4 MR. TURNER: Objection.

5 THE COURT: Sustained.

6 MR. INGERMAN: Okay.

7 BY MR. INGERMAN:

8 Q Now, one of the things that you relied on in connection
9 with your opinion as to the Park Hotel bombing was the
10 confession of someone by the name of al-Sayed, right?

11 A Abbas al-Sayed, yes.

12 Q Now, al-Sayed claims that he was tortured before he
13 gave his confession, doesn't he?

14 A I do recall that, and I know of that.

15 Q Now, I want to ask you a question, Mr. Shaked, about
16 something you said in your direct testimony.

17 MR. INGERMAN: And Sean, if we can pull up -- bear
18 with me here a moment -- page 988 of Mr. Shaked's trial
19 testimony, lines 12 through 14.

20 Your Honor, may I show this to the jury?

21 THE COURT: Yes.

22 BY MR. INGERMAN:

23 Q Now, Mr. Shaked, when you were testifying on direct
24 examination, you said to the ladies and gentlemen of the
25 jury, to recruit means to actually win the trust of the

SHAKED - CROSS - INGERMAN

1329

1 people and then to handle them as agents, and that is in
2 their society in enemy territory, as my commanders have
3 instructed.

4 Do you see that?

5 A Yes, I do see that.

6 Q And by "enemy territory," you went the West Bank and
7 Gaza, right?

8 A Yes.

9 Q Now --

10 MR. INGERMAN: Thank you, Sean. You can take that
11 down.

12 Your Honor, if I may approach the witness to hand
13 him what was marked as Plaintiffs' 4790, which was the
14 charts.

15 THE COURT: You can do that or you can show it on
16 the projector right there.

17 MR. INGERMAN: I'm going to show him something
18 else on the projector so I'd like him to have it.

19 THE COURT: Okay.

20 BY MR. INGERMAN:

21 Q Now, Mr. Shaked, I've handed you the summary charts
22 that you've prepared in connection with these attacks. And
23 I want to ask you a few questions about them.

24 A Go ahead.

25 Q Am I right that for the following attacks, you do not

SHAKED - CROSS - INGERMAN

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1 have any type of Hamas conviction: The March 28, 2001, gas
2 station bombing near Kfar Saba, right?

3 THE INTERPRETER: Can I repeat the question?

4 MR. INGERMAN: Sure. Can we put up slide 3, Sean.

5 A Now, I understand. The attack at Neve Yamin.

6 BY MR. INGERMAN:

7 Q Looking at the summary chart that you prepared, and
8 looking at the screen in front of you, which is slide 3.

9 Do you agree with me that you do not have Hamas
10 convictions for any of the seven attacks that are shown on
11 slide 3 on the screen in front of you?

12 A I can tell you in general that there were convictions
13 that I didn't always include, and the slides do not always
14 contain all of these. And actually, I can tell you about
15 some of these that there were convictions, but I didn't
16 include them in the report for various reasons.

17 For example, in Neve Yamin, in the Dolphinarium and
18 Emmanuel, there were convictions which I didn't include. In
19 Atzmona, there weren't any convictions.

20 Q Sir, looking at the summary chart that you prepared
21 that has been put in evidence to provide to the jury, there
22 is a column that says "Hamas Convictions."

23 Do you see that?

24 A Yes.

25 Q And there's no check next to Neve Yamin for Hamas

SHAKED - CROSS - INGERMAN

1331

1 convictions, right?

2 A That's correct.

3 Q And there's no check next to Dolphinarium for Hamas
4 convictions, right?

5 A That's right.

6 Q And there's no check next to the Emmanuel bombing for
7 Hamas convictions, right?

8 A That's right.

9 Q And there's no check next to Atzmona for Hamas
10 convictions, right?

11 A That's right.

12 Q And there's no check next to Mike's Place for Hamas
13 convictions, right?

14 A That's right.

15 Q And there's no check next to Tel Romeda for Hamas
16 convictions, right?

17 A That's right.

18 Q And there's no check next to the Neve Dekalim column
19 for Hamas convictions, right?

20 A That's right.

21 MR. INGERMAN: Your Honor, I'd like to display the
22 slide to the jury, please.

23 THE COURT: Okay.

24 BY MR. INGERMAN:

25 Q So Mr. Shaked, the slide that we've displayed at slide

SHAKED - CROSS - INGERMAN

1332

1 number 3, lists all of the attacks that we just went through
2 for which you do not have a check on your summary chart for
3 Hamas convictions, right?

4 A We have to bear in mind that for the terror attack at
5 Atzmona, no one was investigated and no one was arrested.
6 For the terror attack at Mike's Place, no one was
7 investigated and no one was arrested or interrogated rather.
8 At the Tel Romeda attack, for that attack no one was
9 interrogated and no one was arrested. For the terror attack
10 at Neve Dekalim, the mortar attack, no one was interrogated
11 or arrested. For Neve Yamin, the Dolphinarium and Emmanuel,
12 if I were to do the report again, I would probably include
13 the testimonies.

14 Q But they weren't included in your report that you were
15 paid \$120,000 to do this case, were they?

16 A I'm only human.

17 Q So let me try my question again.

18 Am I right that slide 3 represents the seven attacks
19 for which there is no check under the column "Hamas
20 Convictions" in your summary chart; isn't that right?

21 A Yes. But I would like to reiterate that for four of
22 the attacks, no one was arrested and, consequently, no
23 one -- this column could not be filled in. For three of
24 them, I would today include the convictions.

25 MR. INGERMAN: I'll pass the witness, your Honor.

SHAKED - REDIRECT - TURNER

1333

1 THE COURT: All right.

2 MR. TURNER: A little follow-up, your Honor.

3 THE COURT: Could you take down that poster. It's
4 blocking my view.

5 MR. INGERMAN: Yes.

6 THE COURT: Thank you.

7 MR. TURNER: Can we put up the Neve Yamin slide.
8 That's the first attack.

9 THE COURT: You're looking at me. You have to
10 look at him.

11 REDIRECT EXAMINATION

12 BY MR. TURNER:

13 Q Mr. Shaked, I would like to start where the bank
14 finished and sort of work through four or five different
15 points. First of all, with respect to the issue of
16 convictions, I've put up on the screen your chart and your
17 slide from the Neve Yamin attack.

18 Do you see that?

19 A Yes.

20 Q Now, let's begin at the bottom with the suicide bomber.
21 We know he was obviously not convicted because he blew
22 himself up, but let's go to the upper left and go to that
23 one, Ayman Halawah.

24 Do you know who Ayman Halawah was back at the time?

25 A Yes.

SHAKED - REDIRECT - TURNER

1334

1 Q Is he dead or alive today?

2 A He's dead.

3 Q Now, let's move over to the right, Abd al-Rahma Hamad.

4 Is he dead or alive today?

5 A He's dead.

6 Q Let's move to the middle, Ra'ed Houtari. Is he dead or
7 alive today?

8 A He's alive.

9 Q And where is he?

10 A He's in prison.

11 Q Now, in some of these and, for instance, Ayman Halawah,
12 was involved in the first, I believe, four attacks we talked
13 about a day and a half, two days ago, was he not?

14 Now, in some of these 24 attacks --

15 THE COURT: Wait. We didn't get the yes.

16 A Yes.

17 MR. TURNER: I heard "ken." I was just a little
18 slower on the up there.

19 BY MR. TURNER:

20 Q Now, in some of these 24 attacks, did you learn during
21 the course of your investigation of these that there were
22 not convictions in some because the terrorists were, in
23 fact, killed?

24 MR. INGERMAN: Objection.

25 THE COURT: Oh, all right. Why did you learn

SHAKED - REDIRECT - TURNER

1335

1 there were no convictions?

2 THE WITNESS: In some cases, the terrorists were
3 killed either at the time of the terrorist attack or
4 afterwards. And in other places, the terrorists weren't
5 arrested at all so there were no testimonies.

6 BY MR. TURNER:

7 Q Now, you were asked some questions at the beginning
8 about a brief period of time in your long journalistic
9 career where you were suspended for a short period of time.

10 Do you recall that question?

11 A Yes. And I'd be very happy to tell why I was
12 suspended.

13 MR. TURNER: Before he goes, let me ask the
14 question. I know he's anxious to answer it.

15 BY MR. TURNER:

16 Q Would you take a moment to explain the circumstances
17 surrounding that suspension and what happened.

18 A In 1999, I published an item in the newspaper which was
19 a very, very sensitive -- on a very, very sensitive subject.
20 It was a scoop, in fact, about the Prime Minister at the
21 time, Prime Minister Ehud Barak, about his plans to divide
22 Jerusalem which he had been planning together with President
23 Clinton from the United States.

24 The item reverberated very, very loudly on the public
25 scene and caused a great deal of criticism of the Prime

SHAKED - REDIRECT - TURNER

1336

1 Minister.

2 The Prime Minister himself called the editor of the
3 newspaper and demanded an apology from him and also demanded
4 that he take disciplinary steps against me.

5 MR. INGERMAN: Objection, your Honor. Move to
6 strike.

7 MR. TURNER: I don't think it's being offered for
8 the truth of the matter asserted. But I'll wait till I come
9 up there.

10 THE COURT: I understand what you're saying.
11 Better come up here.

12 (Sidebar conference.)

13 (Continued on the next page.)
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SIDEBAR CONFERENCE

1337

1 THE COURT: Well, if it's not being
2 asserted -- offered for the truth of what it asserts, what's
3 it being offered for?

4 MR. TURNER: The circumstances surrounding the
5 suspension that they brought up, the fact that those events
6 transpired.

7 THE COURT: Do those circumstances matter if they
8 are not true?

9 MR. OSEN: I think the difference is not whether
10 the scoop was true, but the circumstances in which he was
11 suspended.

12 THE COURT: They're objecting to the words that he
13 was told. I agree. It seems unfair that they should be
14 able to bring out that he was suspended without letting him
15 explain why. But I can't really say it's not hearsay the
16 way he's saying it now.

17 MR. TURNER: Can I ask him without telling us
18 anything you were told, what were the circumstances
19 surrounding your suspension?

20 THE COURT: If he can answer it that way.

21 MR. TURNER: Sure. And if he says he can't,
22 that's fine.

23 THE COURT: Right. I think you can also ask him
24 what his understanding was -- you can get that -- of the
25 circumstances.

SIDEBAR CONFERENCE

1338

1 MR. TURNER: Okay.

2 THE COURT: Let's stay away from quotations of
3 what he was told by anyone.

4 MR. INGERMAN: Can we strike the testimony?

5 THE COURT: Yes.

6 MR. INGERMAN: Thank you.

7 (End sidebar conference.)

8 (Continued on the next page.)

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SHAKED - REDIRECT - TURNER

1339

1 THE COURT: All right. The last answer is
2 stricken. We're going to put another question.

3 BY MR. TURNER:

4 Q Without telling us what somebody else told you, why
5 don't you start with that preamble. Would you please
6 explain the circumstances surrounding the suspension.

7 A I published a big scoop about the division of Jerusalem
8 as that was being planned by the Prime Minister together
9 with President Clinton and the story was confirmed in
10 Jerusalem. This caused some anger, a great deal of anger,
11 and reverberated very widely. The paper that I worked for
12 published a correction -- what's called a correction -- of
13 the item and I was suspended.

14 Three days later when the item was ultimately confirmed
15 both in the United States and in Jerusalem, I received a
16 carload of flowers with letters of thanks and gratitude.

17 MR. TURNER: May we display the bus 19 bombing
18 slide?

19 THE COURT: Yes.

20 BY MR. TURNER:

21 Q This is the one that you talked to the bank about where
22 something was written across this person, Nashash, and you
23 asked to explain.

24 Do you recall that dialogue back and forth?

25 A I recall that.

SHAKED - REDIRECT - TURNER

1340

1 Q And the bank told you to wait until I was up here, so
2 what was your explanation as to putting Hamas associated
3 with Nashash?

4 A Because Nashash was the person who made the connection
5 between Ali Ja'ara and Nufal who was from Hamas because
6 Nashash acted on behalf of Hamas with Nufal to dispatch
7 Ja'ara to carry out the attacks in Jerusalem. Nashash was
8 the one who prepared the vest. Nashash and together with
9 Nufal Adawin prepared Ali Ja'ara to be dispatched to
10 Jerusalem for a bombing attack that was unsuccessful. I
11 have no doubt that if the IDF had not erected a barrier, Ali
12 Ja'ara would have indeed blown himself up on a bus for
13 Hamas.

14 Q Now, let's go to the actual record for a minute and
15 make sure that we are clear on it.

16 MR. TURNER: Could you put up slide number 1,
17 which is Exhibit 4044. This is the conviction that's in
18 evidence as Adawin.

19 May we present this, your Honor?

20 THE COURT: Yes.

21 BY MR. TURNER:

22 Q This is Adawin. And are you familiar with the fact
23 that the first thing that Adawin, who is on the chart, was
24 convicted of was being a member in the Hamas organization?

25 Are you aware of that?

SHAKED - REDIRECT - TURNER

1341

1 A Yes. That was the first count he was convicted of.

2 Q Now, he was also convicted of some other crimes that
3 were unrelated to bus 19, was he not?

4 A Yes. Yes, he was convicted of other terrorist attacks
5 that were unrelated to the dispatching of the suicide
6 bomber.

7 Q Now, let's go to slide 2, which is still Exhibit 4044
8 in evidence. And this is one of the other counts he was
9 convicted of, conspiracy to intentionally cause death.

10 He was convicted in that in January 2004, together with
11 his fellow accomplices in the cell, he recruited a man that
12 was designated to carry out the suicide attack. He planned
13 the attack in detail and prepared an improvised explosive
14 device for the purposes of carrying out the attack. The
15 defendant put the explosive belt on the suicide bomber. He
16 filmed and recorded him reading aloud his last will. The
17 rest of those preparations were deleted from the indictment,
18 and as mentioned, this attack, too, was not carried out.

19 Are you familiar with that?

20 A Yes, I am familiar with it.

21 Q Now, go to the next slide, please. This is still 4044.

22 Was Adawin, likewise, convicted of failing to prevent a
23 crime, referencing the bus 19 attack that resulted in the
24 death of 11 Israelis and more than 50 being wounded?

25 A Yes, I am familiar with it.

SHAKED - REDIRECT - TURNER

1342

1 Q Now, let's go to the next slide. This is 4045. This
2 is the conviction of Nashash.

3 Now, in this particular document, in this excerpt from
4 the conviction record, let's go through this and focus for a
5 minute. First of all, the defendant, that would be Nashash,
6 introduced Ali Ja'ara.

7 Was that the suicide bomber?

8 A Yes. Ali Ja'ara is the suicide bomber.

9 Q And this is telling us that Nashash actually introduced
10 the suicide bomber to Adawin, the Hamas representative.

11 Is that how you read it?

12 A Yes, I also read it like this.

13 Q And does this, likewise, indicate that the suicide
14 bomber specifically asked to be allowed to carry out the
15 attack in the name of Hamas?

16 A Yes, indeed, this is what it says in the second line;
17 that the terrorist Ali Ja'ara had asked to carry out the
18 attack on behalf of Hamas.

19 Q Now go to the next slide, please. This is continuing
20 in Exhibit 4045. This is an excerpt that I have underlined.

21 It states, It should also be recalled that the
22 attacker, that would be the suicide bomber, whom Nashash
23 agreed to connect with the terrorists who sent him to the
24 attack, did, indeed, carry out an attack two weeks later.

25 Did I read that correctly?

SHAKED - REDIRECT - TURNER

1343

1 A Yes, indeed, that's right.

2 Q Now, finally, with respect to your slide -- we won't go
3 back to it for the sake of time -- but with respect to your
4 slide, are you still of the opinion that your slide, at
5 least in terms of your entire investigation, is 100 percent
6 completely accurate?

7 A I do confirm that.

8 Q Now, I want to ask you -- and I'm not going to go
9 through each of these attacks. I'm going to do it in one
10 bundle as an example, and I want to focus on the Sbarro
11 Pizza.

12 For several hours, you were asked questions about
13 newspapers -- the *Denver Post*, the *New York Daily*, the *New*
14 *York Times* -- all sorts of other newspapers that from time
15 to time printed claims of responsibility based upon
16 information they had heard.

17 Do you recall that series of questions?

18 A Of course.

19 Q Now, choosing Sbarro Pizzeria as that example, in that
20 example there were four different sources, four different
21 news organizations that reported other organizations having
22 claimed responsibility.

23 Did you have an official claim of responsibility from
24 Hamas for the Sbarro Pizzeria?

25 A Yes, there was an official claiming of responsibility.

SHAKED - REDIRECT - TURNER

1344

1 And I had already mentioned it here. There was one official
2 communique by the Qassam Brigade and another communique that
3 claimed a claim of responsibility which I personally
4 received on my fax on that very same day at 7:00 p.m.

5 Q Did you, likewise, have access to the ISA, the Israeli
6 Security Agency, report identifying Hamas as the responsible
7 party for that attack?

8 A Yes, I did.

9 Q And there were four convictions for that particular
10 attack, Exhibits 3336, 3301, 3300, and 3205, all Hamas
11 operatives.

12 Did you have any convictions for the Sbarro Pizzeria on
13 for any terror organization other than Hamas?

14 A There was no conviction of any other organization
15 except for Hamas.

16 Q And in both of -- in the Sbarro Pizzeria, did you have
17 the opportunity to both interview the bomb maker Barghouti
18 face-to-face, but also the parents of the suicide bomber?

19 A Yes, I did interview Barghouti. And I also interviewed
20 the parents of the terrorists. And if I may, I also
21 interviewed the three additional operatives that were
22 connected to this suicide bombing, Bilal Barghouti, Muhammad
23 Daghlal and Ahlam Tamimi. She was the woman who led the
24 terrorists to the sea.

25 Q Now, is this a good example, this particular attack, a

SHAKED - REDIRECT - TURNER

1345

1 good example of why, if you're in the search for the truth,
2 it's more important to look at the actual evidence rather
3 than a newspaper article from Denver, Colorado?

4 MR. INGERMAN: Objection.

5 THE COURT: Well, I'll sustain the objection.
6 Save it for closing.

7 BY MR. TURNER:

8 Q Why is this important to you as an investigator to look
9 at the evidence?

10 A The materials, the testimonials that I used, are based
11 on facts, on solid facts, things that come from first
12 source. And it is not like the newspaper. The newspaper
13 perhaps gives you the impression of the first hour or
14 something that is pertinent to the moment of printing the
15 newspaper. It does not wait for a thorough investigation
16 and research. It only suffices with a short one. And
17 perhaps sometimes it relies on a phone call. Another time
18 on an anonymous tip-off.

19 But these aren't any facts. I regret the fact that
20 this is the nature of the media.

21 MR. TURNER: That's all the questions I have.

22 THE COURT: All right. You may step down. Thank
23 you.

24 (Witness exits the courtroom.)

25 THE COURT: Ladies and gentlemen, we will adjourn

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1 for the evening. I know you know the instructions very
2 well, but I can't drive them home too forcefully.

3 Please, no communications with anyone about the
4 case in any way. No Internet searches, no twittering, no
5 tweeting, no Myspacing, my Facebooking, no Google searching,
6 nothing like that. Keep an open mind. Stay away from any
7 media coverage of the case. And we'll see you tomorrow at
8 9:30. We are doing well.

9 (Jurors exit the courtroom.)

10 THE COURT: All right. Anything further we need
11 to cover?

12 MR. STEPHENS: No, your Honor.

13 THE COURT: I know I owe you stuff. I'm going to
14 get you stuff.

15 MR. OSEN: Thank you, your Honor.

16 THE COURT: You owe me stuff, too.

17 MR. OSEN: Depending on -- I know your Honor has a
18 busy calendar tonight. So I think the likely scenario is
19 that we'll start with Mr. Spitzen tomorrow and have to play
20 the video when his testimony is completed. So we will --

21 THE COURT: We're going to get you something
22 tonight.

23 MR. OSEN: Okay. Well, then, we'll still see if
24 the IT folks can cut it in time.

25 In any event, what we'll do is submit the exhibit

PROCEEDINGS

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1 list probably in the next hour or two as soon as we get back
2 from court. I think probably we'll have the first 50 slides
3 or so, which we'll give to both the Court and the defendant
4 this evening. So I think that will cover most of the day.

5 THE COURT: Please make them not argumentative.

6 MR. OSEN: Do our best.

7 THE COURT: No Hamas symbols.

8 MR. OSEN: The first one has the Hamas symbol
9 because the witness will explain what it means, but in the
10 context of that.

11 THE COURT: That, of course, is fine.

12 MR. INGERMAN: Your Honor, can we get some sense
13 of how long they think Mr. Spitzen might be on direct?

14 THE COURT: Well, they were really off about this
15 last one.

16 MR. INGERMAN: That's why I ask.

17 THE COURT: What do you think?

18 MR. TURNER: I shared with you yesterday that I
19 thought a day.

20 THE COURT: But he wants you to tell me so that
21 you're on the record.

22 MR. TURNER: I don't think there's any change in
23 that. It's a day. I hope to be finished in a day.

24 MR. INGERMAN: Well, I thought Mr. Osen said we
25 would get the first 50 slides which would cover just

PROCEEDINGS

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1 tomorrow so I interpreted that to mean it might go more than
2 a day.

3 MR. OSEN: It's a fair inference, your Honor. I
4 think it's possible he will go more than a day, but
5 Mr. Turner I think is perfecting the art of moving this
6 along.

7 THE COURT: It's going to be a day to a day and a
8 half.

9 Hebrew or English?

10 MR. OSEN: Hebrew.

11 THE COURT: Too bad. By the way, the translators
12 have been great. Really, this is a very good service you're
13 using.

14 One more thing. Hang on.

15 (Brief pause.)

16 THE COURT: About how many exhibits do you imagine
17 for Spitzen? Three, four?

18 MR. TURNER: Well, there's a lot of exhibits, but
19 a lot of them are collections, bank wire transfers, for
20 instance. Instead of standing there identifying one after
21 another, there will be like 40 in a group.

22 THE COURT: Collective groups?

23 MR. TURNER: Sounds like a lot of exhibits, but
24 most of them are collective.

25 THE COURT: How many collective exhibits?

PROCEEDINGS

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1 MR. TURNER: I haven't looked at the list.

2 THE COURT: I don't need a precise number. Are we
3 talking dozens or hundreds?

4 MR. OSEN: Hundreds.

5 THE COURT: Hundreds of collective exhibits?

6 MR. TURNER: Hundreds in total.

7 MR. OSEN: There are about 20 senior Hamas
8 leaders, each of which would have received multiple
9 payments. There are five suicide bombers from the 24
10 attacks, plus other, I think, 12 attacks that have multiple
11 payments to various people.

12 So it's really a question of how much foundation
13 has to be laid for bank records in the process.

14 THE COURT: Not much if they're bank records,
15 okay. If they're bank records, they really should be
16 stipulated into evidence.

17 MR. INGERMAN: I actually thought, in response to
18 Mr. Werbner's letter, we pre-admitted a tremendous number.

19 THE COURT: I heard there was an agreement, but I
20 don't think I've been told of the agreement.

21 MR. INGERMAN: Actually, I think Mr. Werbner gave
22 the letter, my letter, to the Court. So I think your Honor
23 has the letter.

24 THE COURT: So we don't need to lay a foundation.

25 MR. OSEN: I think for the vast majority of them

PROCEEDINGS

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1 we shouldn't have to.

2 MR. STEPHENS: We don't know what it's going to be
3 yet so I'm not ready to say that. When I see them, I can
4 respond intelligently to that inquiry.

5 THE COURT: Okay. We'll see what we can do.

6 See you tomorrow. Please exit quietly because I'm
7 going to start my next calendar.

8 (Time noted: 4:31 p.m.)

9 (Proceedings adjourned until Thursday, August 28,
10 2014, at 9:30 a.m.)

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I N D E X

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